

# LEGISLATIVE COUNCIL

Thursday 12 October 2000

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**The President (The Hon. Dr Meredith Burgmann)** took the chair at 11.00 a.m.

**The President** offered the Prayers.

## GENERAL PURPOSE STANDING COMMITTEE No. 5

### Membership

**The PRESIDENT:** I inform the House that on 9 October 2000 the Leader of the Opposition nominated the Hon. R. H. Colless as a member of General Purpose Standing Committee No. 5 in place of the Hon. Patricia Forsythe.

## RURAL ASSISTANCE AMENDMENT BILL

### In Committee

**Clauses 1 to 3 agreed to.**

### Schedule 1

**The Hon. I. COHEN** [11.11 a.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 10:

[3] **Section 3 (1)**

Insert in alphabetical order:

*sustainable land and water management practices* mean land and water management practices that are carried out in accordance with the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

This amendment inserts a definition of "sustainable land and water management" into the bill. The bill contains a provision that establishes programs for increasing the level of investment in sustainable land and water management practices. The Greens support this provision, but the problem is that sustainable land and water management practices are not defined. The Greens amendment seeks to include a provision which is found in many other Acts. It is a standard definition of ecologically sustainable development [ESD] in New South Wales law.

**The Hon. D. J. Gay:** You have a tougher time every time you put one in.

**The Hon. I. COHEN:** Just because I had difficulty pronouncing it does not mean that I do not understand it. It is very important that the definition of ESD is incorporated in the bill so that the programs of assistance under the Act are administered in accordance with the ESD principles. I say to honourable members opposite, particularly those in the National Party, that the amendment is not opposed by the New South Wales Farmers Federation.

**The Hon. D. J. Gay:** That is not what they tell us.

**The Hon. I. COHEN:** My office received a letter from Mick Keogh, the Policy Director of the New South Wales Farmers Association. The letter does not comment on that aspect but my information is that the Farmers Federation does not oppose the insertion of the definition of ESD in the bill. I will try to find direct information. I commend the amendment to the Committee.

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for

the Central Coast) [11.13 a.m.]: The Government does not support the amendment. While the concept of ecologically sustainable development is strongly supported and endorsed by the Carr Government, this amendment is not appropriate, given the range of purposes for which assistance may be granted to persons under the Rural Assistance Act 1989. Many of the forms of assistance are outside the scope of this concept. As is spelt out in the New South Wales government policy for sustainable agriculture, which was adopted in 1998, making the transition to ecologically sustainable agriculture is a delicate balancing act.

To quote from the Premier's foreword to the policy—I always like quoting the Premier—the policy itself forms "part of a process of incorporating principles and objectives of ecologically sustainable development into the ethos of agricultural industries in this State". The policy also aims to facilitate a change in agricultural production in New South Wales towards ecologically and economically sustainable practices and farming assistance. The Carr Government recognises that a sustainable rural economy and a healthy rural environment go hand-in-hand and it is working to ensure a sustainable future for agriculture in New South Wales. It is conceivable that assistance provided under clause 18 (1) (a) will not fully satisfy the broad principles enunciated in section 6 (2) of the Protection of the Environment Administration Act. However, the same assistance may still have a positive environmental impact by helping and encouraging otherwise viable farmers to adopt more sustainable farming practices.

For example, one should consider grants or loan assistance provided by the Carr Government through the authority to encourage wider adoption by farmers of minimum till ploughing and seeding practices. When this technology was introduced a few years ago it presented farmers with an opportunity to adopt a farming practice that is widely deemed to be agriculturally more sustainable than the traditional deep-ploughing. The authority provided loans to farmers to encourage them to modify their existing ploughs and seeding systems to make them more compatible with the minimum-till approach, or to purchase new equipment. Although debate could take place on whether this technology fully satisfies the principles articulated in section 6A of the Protection of the Environment Administration Act, no-one would deny that the program has had a positive environmental impact by contributing to the rapid rate of adoption of this technology by farmers.

These incentives undoubtedly contributed to the development of sustainable farming systems but it is doubtful that the actual impact of the measure in terms of the Protection of the Environment Administration Act could be quantified. Therefore, although the sentiments of the Hon. I. Cohen on this amendment are strongly supported, the Government believes the amendment ties the meaning of sustainable land and water management practices too tightly to section 6 (2) of the Protection of the Environment Administration Act 1991. This is an example of why, in the view of the Government, the Hon. I. Cohen is placing too much onus on a simple assistance measure by expecting it to comply with this part of the Act. He is asking too much and expecting the authority to prove that its programs fully satisfy these principles at all times. For these reasons the Government does not support the amendment.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.17 a.m.]: The Opposition also does not support the amendment. Although the Opposition, along with the Government and sensible members of the House, supports ESD principles, the honourable member indicated a standard ESD definition. I would like to see a standard ESD definition, because that definition changes every time legislation is introduced.

**The Hon. R. S. L. Jones:** It does not.

**The Hon. D. J. GAY:** It does. For some time I have been calling for there to be a standard ESD definition across all pieces of legislation, but, frankly, I have not seen it.

**The Hon. R. S. L. Jones:** There is one.

**The Hon. D. J. GAY:** Not a standard one. There are different ESD definitions in many pieces of legislation. Many of the practices involving the Rural Assistance Authority are quick, in and out matters, such as exit grants to farmers. The Rural Assistance Authority should not be tied to going through the process of ESD when simply allocating funds to help farmers exit an untenable situation. This would result in a loss of resources available to assist farmers, and therefore fewer farmers could be helped. As the Minister quite properly indicated, although an ESD for a minimum till may not be ideal, it is a quantum leap from what was happening before. The necessity to spend money to reassess ESD in every one of these applications would be a poor allocation of resources. For those reasons the Opposition opposes the amendment.

**The Hon. R. S. L. JONES** [11.19 a.m.]: I find it disappointing that neither the Government nor the Opposition supports the insertion of these principles of ecologically sustainable development. It would not take

much for the authority to bear in mind those principles when giving grants. In any case, it should already be aware of the principles. It is somewhat sinister that neither the Government nor the Opposition will support the amendment. Certainly, one wonders whether, in providing assistance, the principles will be breached.

**The Hon. I. COHEN** [11.20 a.m.]: There has been some confusion. In a fax to me, New South Wales Farmers said, in respect of Greens amendment No. 1, it does not oppose the introduction of the definition of ecologically sustainable development in the legislation. That is the information I received from that organisation. The Deputy Leader of the Opposition may have other information, and, admittedly, his information is later than mine. The New South Wales Farmers faxed me on 5 September. There was further communication with the Deputy Leader of the Opposition, but this is the information I had directly from that organisation.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.21 a.m.]: I accept the comment from the Hon. R. S. L. Jones, who indicated that the National Party may be out of touch with the farming community; and that of the Hon. Dr A. Chesterfield-Evans, who said "Again."—with a cheesy grin on his face. I will quote from a letter from the New South Wales Farmers Association in regard to the Rural Assistance bill. The letter is from Mick Keogh and is addressed to a member of my staff. It is dated 6 September, the day after the fax referred to by the Hon. I. Cohen. The letter indicates that the association does not support ESD. It reads:

The problem is that we are essentially talking about a rural assistance authority that has the role of providing assistance such as an exit grant for farmers that have gone broke or an interest subsidy for a farmer that is a long-term viable but experiencing short-term financial hardship. To a large degree these funds are not made available for specific activities or development on a farm, but are simply to assist in the finances of the operation remaining viable.

To apply ESD principles to such grants would consume considerable resources and time, especially as the funding is largely allocated on a whole farm basis. In effect it would require the Rural Assistance Authority to assess ESD principles to the whole farm. When it comes to something as nebulous as the precautionary principle it becomes almost impossible to consider in a practical situation and the association certainly would not support it.

**The Hon. R. S. L. JONES** [11.22 a.m.]: Obviously, in cases where it had no impact whatsoever on ecologically sustainable development principles it would not apply. The authority would know whether it had any impact and, in cases where it had no impact, would simply say, "It has no impact and therefore there is no need to look at those principles."

#### **Amendment negatived.**

**The Hon. R. S. L. JONES** [11.23 a.m.], by leave: I move my amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1 [5], line 21. Omit all words on that line. Insert instead:

(b) to provide to the Minister an annual report on:

No. 2 Page 4, schedule 1. Insert after line 6:

[7] **Section 10 (3)**

Insert after section 10 (2):

(3) A copy of an annual report to the Minister under subsection (1) (b) must be tabled in each House of Parliament within 15 sitting days of that House after it is given to the Minister.

The Deputy Leader of the Opposition said yesterday that the New South Wales Farmers Association was worried about this, but he would be now aware that the amendment has been rewritten to take into account the concerns of New South Wales Farmers. Neither I nor the Deputy Leader of the Opposition—or, obviously, the Government—would want private details released in the annual report. There is a report now, but it does not refer to the effectiveness of rural assistance programs; it merely makes the bland statement. We really need to ensure that the authority performs well in delivering assistance and that taxpayers' money is properly spent—as, I would imagine, in most cases it would be. There has to be some accountability and it has to be a transparent process. I believe that the annual report should contain a little more detail than it does at present. In my view this amendment is certainly worth supporting, for that reason alone.

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.24 a.m.]: I might make my comments about this amendment in parallel with my

comments about the Hon. R. S. L. Jones' second amendment. They both deal with the same general issue. With your forbearance, opposition to one is contingent upon the Government's view of the other amendment. The amendment just moved by the Hon. R. S. L. Jones is contingent upon the other amendment, which proposed that a new section 10 (3) be inserted into the Act to require that regular communication between the board and the Minister be made public. The Government does not support the introduction of such a section. Therefore, this amendment is also not supported.

**The Hon. Dr A. CHESTERFIELD-EVANS** [11.25 a.m.]: I support the amendment, for the reasons set out by the Hon. R. S. L. Jones relating to accountability. The amendment is almost identical to my first amendment. I will speak to this amendment and emphasise my support for what is a very reasonable measure. I will not move my amendment, which is similar.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.26 a.m.]: I spoke yesterday to the Minister's advisers about this matter. I hope I am not verballing them, but they indicated to me that the real problem with this was that it would mean there would be a number of reports, which would take up a considerable amount of time. I did not have the amendment before me at that time. Having read it, the words only applied to the annual report. I wonder if the Minister's advisers would clarify whether I have misunderstood my briefing on this.

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.27 a.m.]: I might now make the comments that I foreshadowed. While the Government supports transparency within Government agencies, the report referred to in new section 10—which would be required as a consequence of the amendment referred to by the Deputy Leader of the Opposition—is separate from and additional to the normal annual report which all agencies are required to submit to Parliament under the Annual Reports (Statutory Bodies) Act of 1984.

It is quite conceivable that the type of report which would be produced under the Government's proposal could contain information prepared in response to specific requests for advice from the Minister on existing Rural Assistance Authority policies and programs. For example, the advice could relate to sensitive matters such as the board's view about the level of interest that the authority should charge on its loans, or the eligibility criteria for loans, grants and other programs, including farm bids. Clearly, it is inappropriate for such reports to be placed in the public arena by being tabled in Parliament.

**The Hon. I. COHEN** [11.28 a.m.]: Having heard what the Minister has had to say, the Greens nevertheless support this type of transparency and believe that the amendment moved by the Hon. R. S. L. Jones, to require a report on the effectiveness of the rural assistance program, would be a very worthwhile exercise and would go some of the way to alleviating the concerns of the Greens. Despite the fact that my amendment was not supported, it would have acknowledged some of the priorities of such a program so that there was transparency and the opportunity to have further comment on it.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.28 a.m.]: I indicate that the Minister's recent comments answered the question I asked.

**The Hon. R. S. L. JONES** [11.29 a.m.]: The information that the Government is hiding from us can be obtained, anyway, presumably by a vote of this House or during estimates committees hearings, or by questions placed on notice. But we should not have to go through that process. It should be made available automatically. I consider that the Minister's advisers have been very obdurate on this question.

**The Hon. Dr A. CHESTERFIELD-EVANS** [11.30 a.m.]: The Minister's answer to this was virtually, "Well, you cannot expect that sort of thing to be transparent", or "You would expect it to be confidential". It is as if it is against the norm to give the public any information. Information should be in the public domain, unless there is a good reason for it not to be. Information given here, with very rare exceptions, does not fall into that category. Asking for a report to the Parliament is simply good practice and should be followed.

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.31 a.m.]: Indeed, it is good practice. As I outlined in my remarks in respect to normal reporting functions of government, this Government is quite happy for these matters to be made available to the Parliament. Specifically, we are talking about issues that would be tantamount to the analogy of the Reserve

Bank releasing information to the Parliament about interest rates prior to it making a determination, in the context of eliciting its own advice. That is the kind of information that subsequently becomes public information, but it is not necessarily the kind of information we would want in the public arena.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.32 a.m.]: I refer to the comments of the Hon. Dr A. Chesterfield-Evans about information. Yes, we need transparency and we need information. However, when we get to the stage of asking for information for information's sake and stopping the provision of services from a valuable department that is trying to help rural people, we should draw the line. Frankly, I believe that this is a proper way of drawing the line.

**The Hon. R. S. L. JONES** [11.32 a.m.]: That was a very silly comment. This does not stop anything; all it does is make sure that the authority knows it has to be accountable. Otherwise we will have another Peter Reith effect in which the whole thing gets hidden for five years and \$50,000 is spent without anyone knowing about it. We do not want a Peter Reith effect with the authority; we want the whole thing to be transparent. We want to know how the money is spent, whether it is effective or not. Taxpayers are entitled to know that.

#### **Amendments negatived.**

**The Hon. Dr A. CHESTERFIELD-EVANS** [11.33 a.m.]: As my first proposed amendment is similar to the second amendment moved by the Hon. R. S. L. Jones, I will not move it. I move Australian Democrats amendment No. 2 on sheet C-018B:

No. 2 Pages 5 and 6, schedule 1 [11], line 6 on page 5 to line 10 on page 6. Omit all words on those lines. Insert instead:

#### **18 Programs of assistance**

- (1) The Authority may establish programs for the grant of assistance to farmers and other persons engaged in rural industries, for:
  - (a) rural development, or
  - (b) rural assistance.
- (2) The grant of assistance for rural development is the grant of assistance for any of the following purposes:
  - (a) increasing the level of investment in sustainable land and water management practices,
  - (b) increasing the level of investment in self-preparedness measures that assist in responding to adjustment pressures and industry downturns,
  - (c) such other purposes in connection with the carrying on of farming operations or rural industries as the Minister may from time to time determine to be appropriate to be the subject of a program of assistance for rural development.
- (3) The grant of assistance for rural assistance is the grant of assistance by providing relief to persons who in the opinion of the Authority are in urgent and genuine need of assistance due to losses suffered through natural disaster, to ensure the availability of short-term assistance in times of natural disaster, being assistance for any of the following purposes:
  - (a) replacing lost or damaged farm improvements and stock,
  - (b) enabling farming operations to continue,
  - (c) providing fodder,
  - (d) such other purposes (including any purposes for which assistance may be granted under subsection (2)) as the Minister may from time to time determine.

In my contribution to the second reading debate I said that there were two functions: first, rural development in which more sustainable long-term practices, or better farming practices, are carried out as improvements; and, second, relief in tough times, such as assistance. My amendment adopts the recommendations made by the New South Wales Farmers Association submission on the national competition policy review of the Act. Yesterday I said:

Unfortunately, a stigma is negatively associated with the authority as an avenue of last resort with many farmers. Dee Wilkes-Bowes from the New South Wales Farmers Association has suggested that this stigma appears to dissuade many potential applicants from using the scheme to improve production efficiencies in their businesses or to enhance the productivity of the land

through investing in sustainable land use practices. The Rural Assistance Authority is clearly not a charity and the Democrats do not think it should be viewed as such. This image must change in order to make the authority more successful and accessible to primary industry producers as a means of assistance to farmers.

The Government has indicated that it will not support my amendment because it will give the authority the appearance of a rural bank. Farmers have referred to the failure of markets to provide credit for rural producers because of the opportunity costs from a banking point of view of getting safer investment for investments with higher yields. In the case of market failure, government intervention is not unreasonable. My enthusiastic researcher has found a speech by Mr Hankinson, who represented the Murrumbidgee electorate in 1932, relating to the Farmers' Relief Bill. I refer to *Hansard* of 15 September 1932, in which Mr Hankinson said:

It is the bounden duty of any Government to assist farmers in necessitous circumstances, whose position is a hazardous one owing to circumstances internal and external over which they have no control. The Government that failed to do that would be recreant to its trust. As the representative of a rural constituency I stand behind the principle of the measure. At the same time I realise that not all the farmers in New South Wales are in need of assistance ...

It is not intended that the whole of the farmers should be brought within the scope of the measure, but it is intended that those who are on the verge of ruin shall have the option of doing so. It is possible that some, who are like round pegs in square holes, will not under any conditions come through, but the great majority will in time emerge from their troubles triumphantly. It only needs a return to normal conditions and this country will once more be restored to its former financial position.

Farmers are having a tough time of it, and banks may not be willing to lend in that situation. The Government should come to the party for farms that are likely to survive in the long term. I commend my amendment to the Committee.

**The Hon. I. COHEN** [11.36 a.m.]: The Greens believe that the Australian Democrats amendment deserves the support of all members. The Government objects to the amendment because it is designed to give the authority the power to provide general assistance to farmers. Perhaps the Government needs to take a history lesson to find a clear precedent for this amendment. I was interested to hear the speech from 1932 that the Hon. Dr A. Chesterfield-Evans quoted. Some speakers have noted during debate in relation to this bill that the authority was originally set up as the Farmers Relief Board. It is interesting to go back to old debates from the Depression years. Members of today need to appreciate the widespread understanding expressed by members of that era when confronted by farmers facing widespread hardship. There was unanimous support in this House for the Farmers' Relief Bill and the accompanying Moratorium Bill, which provided a remedy for farmers who were threatened with the loss of their farms due to bank foreclosures. I also have a keen researcher, Karla Sperling. She found a speech by Mr H. K. Manning that is reported in *Hansard* of 18 October 1932. Mr Manning stated:

The real cause of catastrophe to the farmers has been the fall in the price of general farm produce during the period between 1927-28-29 and the present time ...

It is because an important industry is threatened that a measure of this kind has been introduced. The Government realises that to rehabilitate our industries one of the most important measures necessary is that now under consideration. A large percentage of the farmers having small resources is forced to borrow. As they borrow, and work on an overdraft, the value of their securities diminishes. Now they are virtually at the end of their resources. Their land in the past has been highly capitalised. If we compare the capitalisation of their land in the years 1927 and 1928 with the valuations at the present time, it becomes apparent that the farmers are in a very serious position. If to that we add the further difficulty of the high cost of production and the fall in world prices, it will be seen that unless something is done on behalf of the farmers the farming industry and the pastoral industry, too, will languish ...

A measure is needed that will provide the farmers with a stay against executions with which they are threatened—executions which in many cases will immediately put the farmers out of their present occupation.

Depression-era politicians accepted the central role of government, which is so comprehensively denied by the economic rationalists who control this place at present. They recognised that the role of government is to govern for the common good and when the operation of the market produces injustice, as it did during the Depression and as it is at the present time, it is proper for government to intervene. The so-called Country Labor members and the National Party members need to take a history lesson. They need to go back to the philosophy of people who were the architects of the original legislation, such as Jack Lang. If they did, they would support the amendments as a proper and necessary response to the rural crisis.

The focus on supporting farmers in times of natural disaster needs to be broadened to supporting farmers in times of economic disasters. The cause of the economic disaster also needs to be recognised. The rural crisis facing the rural sector is due to the economic policies that have been adopted by all levels of government and both big political parties. Issues such as high suicide rates in rural areas need to be understood

as a tragic but inevitable result of these policies. People who live in rural areas are able to adjust to the natural climatic cycle. However, it is the economic calamity caused by the actions of the banks and other big business interests, supported by governments that lack compassion, that is the real cause of rural hardship and decline. I urge all honourable members who have a genuine concern for country people to join with us and support these amendments.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.40 a.m.]: They were fine words from the Hon. I. Cohen, which no-one could disagree with. However, they do not have a great deal of relevance to the amendment. I have some problems with this amendment. The philosophy behind it is honourable. I accept what the honourable member is trying to achieve. I do not believe it is necessary. It is my understanding that most contemporary farmers have never seen the Rural Assistance Authority as a charity, but rather as a professionally run organisation. Honourable members need do no more than to have listened to the maiden speech of the Hon. R. H. Colless yesterday in which he indicated the professional way the Rural Assistance Authority has undertaken its duties, and should continue to do so in the future.

In moving this amendment the Hon. Dr A. Chesterfield-Evans removed a series of amendments. I would have also had a problem with those amendments. I understand the simplistic plan that the honourable member was trying to put in place, but they would have removed the ability of the Rural Assistance Authority to operate as a holistic unit and to bring all the parts of a problem together and address them within a farming community. That is what the authority wants to do—very much as the Hon. R. H. Colless detailed as the way of the future. The Hon. Dr A. Chesterfield-Evans has not moved the amendments he circulated. He produced further amendments yesterday, but did not brief us on them. We have to take them in good faith.

The only briefing on the amendments was given by the Government advisers. Whilst they also believe that the amendments are moved in good faith, their concern is that the composition of these amendments would create a problem in the drafting style of the legislation. Although there is a change from "rural assistance" to "rural development", new section 18 (3) contains the words "grant of assistance for rural assistance". The amendment is written in a convoluted form that will cause trouble when in operation in interpreting the bill. I cannot see that the amendment achieves anything. The perception from farmers is that the authority is not a charity, that it is there for holistic development, which is what the Hon. Dr A. Chesterfield-Evans is trying to achieve in his amendment. For those reasons, the Opposition cannot support the amendment.

**The Hon. Dr A. CHESTERFIELD-EVANS** [11.43 a.m.]: The New South Wales Farmers submission on the review of rural assistance made the point that there are the two concepts: development and assistance. This amendment attempts to put the two concepts together. We have not attempted to split the authority, so that there would not be complexity to which the Deputy Leader of the Opposition refers. The fact that the words exist in the Act gives the Rural Assistance Authority considerable scope for making a decision on a holistic basis as to whether assistance is rolled up with future development so that problems do not recur. In these amendments I tried to steer a middle road between compartmentalising in a complicated way, yet still allowing two aspects of rural assistance to be dealt with. I apologise if the briefing was not good enough.

**The Hon. D. J. Gay:** It is not that it was not good enough, it was not there.

**The Hon. Dr A. CHESTERFIELD-EVANS:** I apologise that you were not briefed. Certainly that was my intention, and I had hoped that the Opposition would support it on the basis that it was consistent with what the Farmers Federation had requested.

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.44 a.m.]: The Government does not support the amendment. This new section relates to the composition of the board and has little or no effect on the operation of the Act. This amendment is not supported, as a change in the wording of new section 12 in this way would be inconsistent with the objects of the current bill which are: to promote the efficient delivery of programs of assistance to farmers and other persons engaged in rural industries and to other persons as provided for in this Act. The Government is of the view that the meaning of the term "assistance" within the current Act is sufficiently broad to accommodate development. This is borne out by the suite of programs that are administered through the authority, which extend to a range of on-farm capital works.

For example, recent programs provided through the authority have included loans and grants for dam construction, improving on-farm drainage and water conservation, installing seed storage and other drought-

proofing facilities, installing irrigation equipment and, importantly, providing training in farm business skills, risk management and improved property planning and other support for farmers. These fundamental elements of on-farm development are available at the current legislative framework and, therefore, it is unnecessary to include the word "development" in the Act at this point. As to the historical issues raised by the Hon. Dr A. Chesterfield-Evans—that is, the Farmers Relief Act 1930—the relevant provisions dealt with a stay of eviction by banks, not cash assistance. We are separated by 70 years from that original Act and we are also separated from the meaning referred to in that Act. The analogous set of provisions to the stay order provisions in the old relief Act are the mechanisms currently prevailing in the Farm Debt Mediation Act 1994, which have replaced stay orders with mediation provisions.

**Amendment negatived.**

**The Hon. I. COHEN** [11.47 a.m.]: I move Greens amendment No. 2:

No. 2 Page 6, schedule 1 [11]. Insert after line 10:

- (4) Before determining that a grant of assistance to a farmer or person engaged in a rural industry be made, the Authority must consider the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

It is not enough for ecologically sustainable development [ESD] principles to be included in legislation as a set of motherhood principles. A vital aspect of achieving sustainability is that the principles be given some area of application. The amendment seeks to ensure that ESD principles are applied by the Rural Assistance Authority prior to the determination of applications for assistance. The effect of this amendment would be that the authority would need to satisfy itself that funds would be used for a purpose which is consistent with ESD principles. I commend Greens amendment No. 2.

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.49 a.m.]: The Government supports Greens amendment No. 2.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.49 a.m.]: The Opposition also supports the Greens amendment because it is an indication that the authority has to take into consideration, rather than carry out a direction, that a full-scale evaluation be done all the time. I would imagine, knowing how the authority operates, that it does that anyway. Therefore there is no great harm in reinforcing that the authority should do it. It is something that the authority should do anyway. But our concern earlier was that it would be entrenched and waste resources within the area in sections that really did not need that particular part applied to it.

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.50 a.m.]: With this amendment, the Hon. I. Cohen seeks to require the authority to consider whether an application for assistance is consistent with ecological sustainable development principles. The Government does not oppose the amendment, as it has the effect of requiring that authority to consider these principles in determining whether to grant application for assistance under section 18. The amendment also emphasises the importance of ecologically sustainable development principles to farmers, and encourages them to apply such principles when making on-farm development decisions.

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [11.51 a.m.]: The Opposition accepts the amendment because the words "must consider" are very different, as indicated to me, to the words "must satisfy". This is a normal part of the authority's consideration, as it should be. They are key words. I should probably congratulate the Hon. I. Cohen on being so sensible as to use such words.

**Amendment agreed to.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

**Bill reported from Committee with an amendment and passed through remaining stages.**

**CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION)  
MISCELLANEOUS AMENDMENTS BILL**

**In Committee**

**Clauses 1 to 4 agreed to.**

**Schedule 1**

**The Hon. PATRICIA FORSYTHE** [11.57 a.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 5, schedule 1 [7], lines 16 and 17. Omit "that it would not be appropriate in the circumstances to hold a preliminary conference or".

No 2 Page 5, schedule 1. Insert after line 19:

**[8] Section 65 (1A)**

Insert after section 65 (1):

(1A) Despite subsection (1), a Children's Registrar may dispense with the requirement for a preliminary conference between the parties if:

- (a) there has been a defended hearing in relation to an application for an assessment order under section 53, an interim care order under section 69, or a care order under section 70, and the Children's Registrar considers that no useful purpose will be served by a preliminary conference, or
- (b) the parties consent to dispense with the preliminary conference, or
- (c) there are circumstances, identified by the Children's Court Rules, in which the requirement for a preliminary conference may be dispensed with.

This morning further slight modifications were made to the amendments. I acknowledge the support from some members, particularly the Greens, who, in my absence earlier, undertook some of the work and the preparation. I understand there has been some agreement with the Government about the direction in which we are now going. As we know, the bill makes various amendments to the Children and Young Persons (Care and Protection) Act. Most of the amendments, as we agreed during the second reading debate yesterday, are fairly mild. They are basically the result of what we believe to be operational improvements. However, the role of preliminary conferences could be deemed as both a policy decision and operational policy because it is clear, if one goes back to the 1998 legislation, that a very strong determination arose out of the review that preliminary conferences should be introduced as part of the general policy of the operation of the court in relation to the care and protection of children.

Although I am prepared to accept, to some extent, what the Government has been saying about this provision being operational, it has some policy implications. The amendment relates to schedule 1, item [7]. The Government proposes to amend section 65 to provide that the Children's Registrar may dispense with the need to hold a preliminary conference if he or she is of the opinion that it would not be appropriate in the circumstances to hold a preliminary conference, or that it should be deferred until some later time. The review of the Children's Care and Protection Act 1987 indicated that there were many problems in the operation of the court, including long delays in the disposition of cases. One of the key recommendations was that there should be Children's Registrars who would conduct preliminary conferences. The Opposition has moved this amendment because of the strength of the work in the review of the 1987 legislation highlighting the problems with the work of the court.

The idea behind preliminary conferences was that the practice of having list days in which large numbers of matters are brought before the court for brief procedural steps would be abolished. List days might be convenient for the court, but they are far from convenient for other participants who may spend long periods of time waiting around courts for the case to be called. List days were the subject of serious criticism in the review of the 1987 Act, which led to various reforms of the 1998 legislation and to these amendments. Under the new Act the first significant step in court action should be an appointment with a Children's Registrar at which all parties and their legal advisers would be present. The idea is that at that meeting the registrar should map a pathway for the resolution of the case by hearing or otherwise.

In proposing these amendments, the Opposition is aware of the correspondence that has been received from the Chief Children's Magistrate and people involved with Legal Aid expressing some concern at the narrowness of our original amendments. As a consequence, the Opposition revised what it proposed to do to ensure a preliminary conference is either held at the beginning or postponed to a later time subject, as the second amendment outlines, to the Children's Registrar being able to dispense with preliminary conferences between the parties. Three reasons are set out as to why that might occur—for example, if circumstances are identified by the Children's Court rules in which the requirement for a preliminary conference may be dispensed with. We believe it is not a question of giving a straight out clear option to the Children's Registrar as to whether to have a preliminary conference; rather it is to narrow the terms upon which he or she could make that decision.

Yesterday in her summing up in the second reading debate the Minister attempted to deal with some of these issues in advance. She referred particularly to preliminary conferences not being necessary in some cases because it would be seen basically as a waste of everybody's time and resources when the parties would be at such odds. The suggestion behind that is that somehow the role of preliminary conferencing is mediation. In fact, that was not what the 1998 legislation intended, nor is it the way it is expected to operate. Mediation may be a course that is resolved from the preliminary conference but it is not the purpose of the preliminary conference. I know the Government has had further discussions about the nature of the amendments. I hope that in view of those discussions and the fact that the Opposition has narrowed the basis upon which we would recommend preliminary conferences could be disposed of, or at least give greater opportunity to the Children's Registrar, that we will now get some agreement from the Government.

**The Hon. I. COHEN** [12.03 p.m.]: The Greens support Opposition amendments Nos 1 and 2, which will enable the Children's Registrar to dispense with the mandatory requirement for preliminary conferences in some circumstances. Section 65 of the 1998 Act sets up requirements for preliminary conferences to take place. Under this section the Children's Registrar or the Children's Court has to arrange and conduct a preliminary conference between the two parties. The reason for preliminary conferences was to avoid some of the problems identified in the review of the 1987 Act. One of the key recommendations was that Children's Registrars would conduct preliminary conferences. The idea behind having preliminary conferences is that the practice of having list days when large numbers of matters are brought before the court for brief procedural steps will be abolished.

List days might be convenient for the court, but they are far from convenient for other participants who must spend longer periods of time waiting around courts for their case to be called. Participants such as children, their care givers, lawyers, Department of Community Services officers, experts and others may have to attend numerous and often lengthy pre-trial hearings, sometimes travelling hundreds of kilometres, which can be costly and time-consuming for all concerned. The Government amendment to this section enables the Children's Registrar to defer a conference or dispense with the requirement altogether. This is a major move away from the original policy initiative, which required preliminary conferences in all circumstances. The Greens are of the view that the court should not have a broad discretion to dispense with the requirement of the preliminary conference; rather, the legislation should set out when this can occur.

The amendment specifies three situations when the requirement to hold preliminary conferences can be dispensed with: firstly, when there has been a defended hearing in relation to an application for an assessment order under section 53, an interim care order under section 69, or a care order under section 70—the Children's Registrar must also consider that no useful purpose will be served by a preliminary conference; secondly, if the parties consent to dispense with a preliminary conference; and, thirdly, the circumstances described by the regulation. This is important because when the legislation comes into force new situations may arise when it is considered necessary to dispense with the need for a preliminary conference. The Greens support these two amendments moved by the Coalition.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.05 p.m.]: The Government accepts the Opposition's amendments. The Opposition has refined and narrowed its original amendment. The amendment now refines the circumstances under which a preliminary conference can be dispensed with. The Government is happy to accept the Opposition amendment in its current form. I place on the record the Government's view, which is an important principle, that the Children's Court needs to have the flexibility to manage its case load in the most efficient way, and that was always the rationale for the original amendment moved by the Government.

**Amendments agreed to.**

**The Hon. PATRICIA FORSYTHE** [12.06 p.m.]: I move Opposition amendment No. 3:

No. 3 Page 5, schedule 1. Insert after line 21:

**[9] Section 72 Determination as to care and protection**

Insert "that the child or young person is in need of care and protection or" after "probabilities," in section 72(1).

The clause we seek to amend is not contained in the original bill. However, its purpose is to amend what has been considered to be sloppy drafting in the original Act and to make clearer what we believe is the provision in the original Act. The section in the current Act provides as follows:

- (1) A care order in relation to a child or young person may be made only if the Children's Court is satisfied, on the balance of probabilities, that even though the child or young person is not then in need of care and protection:
  - (a) the child or young person was in need of care and protection when the circumstances that gave rise to the care application occurred or existed, and
  - (b) the child or young person would be in need of care and protection but for the existence of arrangements for the care and protection of the child or young person made under section 49 (Care of child or young person pending care proceedings), section 69 (Interim care orders) or section 70 (Other interim orders).

This section is difficult to understand because it says the court may make a determination only if it is satisfied the child was in need of care and protection within the terms of paragraphs (a) and (b). Read literally, this appears to preclude the court from making an order if the child is in need of protection now that interim care orders are not made under sections 49, 69 or 70. A few words seem to be missing from the middle of the first clause and the purpose of this amendment is to supply those words. Professor Parkinson, who undertook the review, has expressed concern that this particular clause is sloppy and needs to be revised.

I understand his concerns have been made known to the Government since 1998, or at least since last year and earlier this year, and that while the Government was not prepared initially to adopt his recommendations because it was concerned that it had not undertaken consultation, this amendment is an attempt to make the clause clear and more easily understood. At the end of the day it certainly does not change the principle of the legislation; it is merely tidying up the legislation. The amendment is an attempt by the Opposition to implement the desire of Professor Parkinson, to whom the bill is very dear. After giving intense support to a review of the Act and working through it for about four years he wants an Act that is the best that the Parliament can achieve in the circumstances. He believes very strongly that what effectively has been a minor drafting problem could be so easily overcome with the support of the Parliament. I am therefore delighted to move the amendment.

**The Hon. I. COHEN** [12.10 p.m.]: The Greens support Opposition amendment No. 3, which would change the words "was in need of care" to "is in need of care". It would also ensure that timeframes are covered. As Professor Parkinson puts it, the change is necessary because:

This clause is difficult to understand, because it says that the Court may make a determination "only" if satisfied that the child **was** in need of care and protection in terms of (a) and (b). Read literally, this appears to preclude the Court from making an order if the child **is** in need of protection now, but there has been no interim care order made under sections 49, 69 or 70.

The Greens support the amendment.

**Amendment agreed to.**

**The Hon. I. COHEN** [12.11 p.m.]: I move Greens amendment No. 1:

No. 1 Page 7, schedule 1 [15]. Insert after line 24:

Omit section 135 (1) (b) (ii). Insert instead:

- (ii) a person who is related to the child or young person and who voluntarily undertakes the care and protection of the child or young person without seeking assistance from the Director-General, and

**[16] Section 135 (3)**

In moving our two amendments the Greens are not trying to be obstructionist. As much as anyone else in the community, we want this bill to pass quickly and the changes to the 1990 Act to be proclaimed as soon as possible. However, the Greens had similar amendments drafted two years ago when the original bill was

enacted. I did not proceed with those amendments because of pressure from the Government, which basically said that if the amendments were passed the whole child protection package presented to Parliament at the time would be pulled. Instead, I raised my concerns during debate on the bill. The Attorney General, on behalf of the Minister, gave a ministerial undertaking that the issues in question would be looked at shortly. At the time the Minister's office indicated to me that the issues would be considered in the first round of amendments to the Act, which we are now dealing with. This has not occurred.

The Greens were prepared not to proceed with the amendments if the Minister gave a written commitment to us outlining that the Minister and the Department of Community Services [DOCS] supported in principle the objectives of the two amendments and committed to consulting on both of them as part of the next round of consultations on further amendments to the 1998 Act. However, this has not occurred. I now move the amendments so that at the very least debate on the issues can occur. With regard to amendment No.1, the Act is based on the sound principle that when children are unable to live with their parents the least intrusive intervention in relation to substitute care is desirable.

Kinship placements have therefore been treated differently from out-of-home care on the understanding that children in these circumstances usually have better outcomes and the less intervention by DOCS the better. On the whole this is true: kinship placements do not require the automatic intervention of the Department of Community Services but may on occasion need specific assistance. Some children and young people who are in kinship places will, unfortunately, face difficulties similar to those faced by children in out-of-home care. Despite this, under the Act children in kinship care will not have access to the same services as children in other types of placements.

The reason for this anomaly is that out-of-home care is defined very narrowly to exclude care by any person who is related to the child. The definition of "out-of-home care" is important because access to services under the Act is restricted to children and their carers who fall within this definition. In particular, there are concerns about children and young people who are currently subject to wardship orders but who are placed with relatives. These children and young people are likely to be disadvantaged by the new legislation. This amendment will allow children and young people in kinship care, or their carers, to request assistance, including access to counselling and leaving-care services. The amendment was originally proposed by the Council of Social Service of New South Wales. I commend Greens amendment No. 1 to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.14 p.m.]: The Government does not support the amendment, which would bring within the ambit of the 1998 Act all family and extended family arrangements where a child or a young person is staying with another family member for more than 28 days, irrespective of whether there are any care and protection concerns. That is something that the Government has difficulties with. However, the Government acknowledges that there is a definitional anomaly between current care and protection legislation and proposed sections 135 and 13 in the new legislation. This issue to do with kinship care will be canvassed in a discussion paper soon to be released by the Department of Community Services. The discussion paper outlines further amendments proposed as part of the consultation and training undertaken over the last 12 months in preparation for the implementation of the new legislation. Kinship care is one of a number of issues that are canvassed in this paper.

**The Hon. PATRICIA FORSYTHE** [12.15 p.m.]: The Opposition also does not support the amendment proposed by the Greens. This is in part because we accept what the Government has said, that this issue will be discussed further in the to be released discussion paper, and we look forward to that. We understand that that is a commitment given by the Government. I do not know whether we have a date when the discussion paper will be released. It would be of some assistance to the Chamber to know when that will occur. But I take the Government's point that the definition as proposed by the Greens would broaden the issue of kinship care in a way that would probably mean that many families would have difficulty with it. When the Minister raised this issue yesterday I was somewhat surprised, until I read the wording again, by the breadth of the wording.

I recall my experience over about three years. Each Christmas holidays, a period of about six weeks, I used to take my niece, who lived in New Guinea and was then aged five to about seven, for the holidays here so that she did not have to live in the tropical head of New Guinea over the holiday period. Effectively, I was her guardian for that time. So I would have been caught up within the wording in the amendment. There was no care and protection sense in that role; it was just that I was her carer. It was kinship caring. I am sure this would be the case with many families. Kinship care is now widely used. In families where there is a temporary or short-

term mental illness or issues to do with drug addiction, grandparents or aunts and uncles or siblings of the parents may step in. Many of those families would be caught within the ambit of the Department of Community Services under the proposed amendment.

**The Hon. Dr A. CHESTERFIELD-EVANS** [12.18 p.m.]: The Australian Democrats support the amendment. Currently around 40 per cent of children in the care of the Director-General of the Department of Community Services are placed in kinship or other family care. This is now the highest proportion of out-of-home care and it is increasing. To deny these children and families the support, monitoring and review of the department would deny a large proportion of these children not living at home support, review and monitoring. The placement of children by the department in kinship care is normally done without the same levels of checks and balances as apply with other foster carers or workers in residential centres. There is evidence that child abuse and neglect is passed on through generations, so removing children and placing them with grandparents without support, monitoring or evaluation of the placement may lead to further child abuses.

The extension of the support of the Department of Community Services into the area of kinship care is a necessary initiative. The attempt to abrogate this responsibility is perhaps a recognition that the Department of Community Services is not monitoring kinship care to the level it should, and it therefore wishes to remove itself from any responsibility in this regard. The Democrats support the amendment and further encourage the Government to provide the Department of Community Services with the resources to support children in kinship care. One cannot but reflect that the lack of resources means that if children can be moved into kinship care the department is glad to be clear of the responsibility. If it were taking on the large increase in the number of people it had to supervise, it would be very stretched for resources. So it would not welcome an added burden.

In a sense, arguing to an absurd level that the department would have responsibility for someone staying with a relative over the Christmas holidays trivialises the problem. People who have fairly serious problems may be given to, say, a grandparent who perhaps does not have the same control as a parent or the supervision level of another family member. That can be an extremely difficult situation. For example, the grandparents of a child may have custody of that child because the mother is unstable but they may be unable to keep the child from the influence, and even harm, caused by the mother from whom care had been taken. Also, many kinship carers may have difficulty controlling a situation and would welcome departmental intervention, but the department may be strapped for resources and, as it does not have a responsibility to look after people in kinship care, is unable to provide the necessary support. For those reasons the amendment should be supported.

**Amendment negatived.**

**The Hon. A. G. CORBETT** [12.20 p.m.]: I will not proceed with my amendments and I wish to explain the reason for not doing so. My amendments would mean that a person having parental responsibility or an authorised carer could physically restrain a child if the child's behaviour was capable of causing loss or serious damage to any property. I took advice from a number of people. I rang the Children's Commissioner, who advised me against moving the amendments. The department also informed me that section 147 of the Children and Young Persons (Care and Protection) Act 1998 refers to "Indemnity of authorised carers", which states:

An authorised carer is entitled to be indemnified by the Minister for any loss or damage suffered by the authorised carer that is caused by a child or young person while in the care of the authorised carer.

I said in my contribution at the second reading stage of the bill that if a child were to pick up an object and throw it through a television screen or throw a chair through a window, significant damage would be caused. However, section 147 provides that in such cases people will be compensated. Another problem related to the meaning of the words "serious damage" and where one draws the line between "serious damage" and "damage", because it is a subjective view. Also, it would allow a carer to take from a child or young person any weapon that the child may be wielding. However, if a child is in an agitated state and is causing damage to property, any action may invite retaliation resulting in assault or physical violence. Finally, the Minister in reply said that the issue was given serious consideration at a forum organised by the Community Services Commission and community visitors, which emphasised that the Act focuses on the child and the needs of the child rather than considering damage. For those reasons I do not move the amendments circulated in my name.

**The Hon. PATRICIA FORSYTHE** [12.24 p.m.]: I move Opposition amendment No. 4:

No. 4 Page 8, schedule 1 [15], line 2. Omit "by a designated agency".

The amendment is meant to simplify the drafting of the bill to make it easier to understand. It is a technical change to resolve what is believed to be a drafting problem with the Government's amendment. While it is of a

technical nature, it is also of some practical significance. The purpose of the Government's amendment is to clarify the starting point at which a child or young person can be said to be in out-of-home care within the meaning of the Act. This is important because it has implications for sections 155 and 156, which deal with voluntary care arrangements. The Government provides, inter alia, that out-of-home care should begin when a child is placed with an authorised carer by a designated agency. The Government's amendment does not deal adequately with the situation in which a child is placed with the principal officer or a designated agency by a parent. The principal officer is an authorised carer under the Act.

In the lower House the Minister said her advice was that there was no problem in practice and that this was covered by section 138. However, in the opinion of Professor Parkinson, that is not correct. His view is that section 138 refers to arrangements being made for out-of-home care by a designated agency, not a placement. The issue may best be understood by considering the situation of a voluntary placement by a parent in an institution for children with disabilities. Although we hope that is in decline, it still occurs. In such a case the placement would, in ordinary language, place the child with the agency.

The principal officer, or a member of staff acting under delegated authority from the principal officer, would act on behalf of the agency to receive the child into its care. That is why in current practice there are commonly called voluntary placements. The parent does the placing on a voluntary basis. In such cases the out-of-home care is still arranged by a designated agency within the meaning of section 138 since the word encompasses the ongoing provision of care for the child, not just the initial placement. However, it would be difficult to describe this kind of placement as being with an authorised carer by a designated agency. For those reasons the Opposition moves the amendment. The intent of the Opposition is to put the Act in more simple language, plain English, so that it is more easily understood.

**The Hon. I. COHEN** [12.27 p.m.]: The Greens support the amendment, which is a technical amendment involving out-of-home care. The amendment deletes the words "by a designated agency". As Professor Parkinson puts it, the Government bill "provides ... that out-of-home care should begin when a child is placed with an authorised carer by a designated agency". The Government's amendment does not deal adequately with the situation in which a child is placed with the principal officer of a designated agency by a parent. For instance, a voluntary placement occurs when a parent voluntarily places a child with disabilities in an institution. These kinds of places would be difficult to describe as being made with an authorised carer by a designated agency. The Greens support the amendment.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.28 p.m.]: The Government does not oppose the amendment.

#### **Amendment agreed to.**

**The Hon. I. COHEN** [12.28 p.m.]: I move Greens amendment No. 2:

No. 2 Page 9, schedule 1. Insert after line 15:

**[26] Section 199 Definitions**

Insert after paragraph (d) of the definition of *prescribed children's service*:

- (e) an out of school hours children's service,

**[27] Section 200 Meaning of "children's service"**

Omit section 200 (1). Insert instead:

- (1) For the purposes of this Act:

- (a) a *children's service* (except in the case of an out of school hours children's service) is a service that provides education or care (other than residential care), or both education and care, whether directly or indirectly, for one or more children under the age of 6 years and who do not ordinarily attend school (disregarding any children who are related to the person providing the care), and
- (b) an *out of school hours children's service* is a service that provides education or care (other than residential care), or both education and care, whether directly or indirectly, for one or more children under the age of 14 years (disregarding any children who are related to the person providing the care).

**[28] Section 213A**

Insert after section 213:

**213A Application of Part to certain out of school hours children's services**

Despite the other provisions of this Part, this Part does not apply to a prescribed children's service, being an out of school hours children's service conducted by a school within the meaning of the *Education Act 1990*, until such day as may be appointed by proclamation for the purposes of this section.

There are more than 600 out of school hours [OOSH] services operating in New South Wales for up to 80,000 children between the ages of five years and 12 years—that is when casual, regular and vacation care users are taken into consideration. Children can attend OOSH services for up to five hours per day during school weeks and eight to 10 hours per day during school holidays. Neither the Commonwealth Government nor the State Government regulates or monitors OOSH services. The Greens find this remarkable and believe they should be properly regulated. Outside school hours care is currently being reviewed by the department. Given that the department is also looking at the implementation of national standards for OOSH, the exclusion of these services from the Act and the bill appears to be a serious and inexplicable omission. We acknowledge that it may be difficult in the short term for the Government to draft regulations with which OOSH services would be able to comply.

Therefore, it may be necessary to gradually implement regulations for OOSH services or to draft a set of standards that services would be expected to meet over a more extended period of time. However, in the interim it is important that this type of care be recognised in the Act. The Greens would like to see the bill amended to include services for school-age children under section 200. This is the purpose of amendment No. 2. Finally, it must be remembered that for over a decade the lack of out of school hours regulation has been raised with successive governments by community services sector organisations. During this period there has been no adequate explanation for the continuing failure to regulate. The Greens would like the Government to address in its response to this amendment why it is that the Government accepts that child care services provided to under five-year-olds should be fully regulated, yet it is unable to regulate OOSH services. I commend Greens amendment No. 2 to the Committee.

**The Hon. A. G. CORBETT** [12.30 p.m.]: I have sympathy for this amendment. I, like many members here, use out of school hours services. Whereas the service that I am familiar with is very good, there are many services that are substandard, and children deserve the protection that this regulation could provide. In her speech in reply the Minister quoted the Minister in the other place as saying that it is a major policy issue. It is a very important issue. As the Hon. I. Cohen said, this issue has been talked about and we have been lobbied about it for many years. The question is: when is this Government going to do something about this issue? Which is the relevant legislation for the Government to provide for the protection of children in out of school hours? If it is not this legislation, which legislation is it? Will the Minister tell us which is the relevant legislation that we should be considering to get something done about this matter?

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.31 p.m.]: The Government does not support the amendment. It deals with a major policy issue and departs from the Minister's undertaking that the miscellaneous amendments bill was a tidying-up, fine-tuning exercise that did not involve any major new policy areas. The Office of Child Care is currently preparing a report for the Minister on OOSH in New South Wales which will certainly canvass issues relating to national standards and their implementation, the voluntary code of practice that the services currently operate under, and future Federal Government funding of the services. The Government will consider the future of OOSH services on the basis of that report.

**The Hon. Dr A. CHESTERFIELD-EVANS** [12.32 p.m.]: I was pleased to hear the Minister's response that this is being considered, but that is sadly overdue. Under the definition of children's services, out of school hours care effectively falls under under the same regulations that cover pre-school child care. The number of schoolchildren attending before and after school care or out of hours school care is increasing each year. There are many reasons for that, from the increase in the number of women in the work force, the increase in the divorce rate leading to more single parents, and the increase in the number of families with two working parents. Many schools run out of school hours care and I imagine that when my son reaches school age there will be days when he and many of his friends will be attending this type of care.

It is not unreasonable to ask that the Department of Community Services help monitor, evaluate and review this type of children's service in order that they do not remain unregulated. Similar to the other

recommendation of the Greens, following upon the recommendation of the Council of Social Service of New South Wales [NCOSS], this is a sensible amendment that may require the allocation of additional resources to the department to enable it to continue to support and monitor these services. I am sure that all members of this Chamber, and society in general, would hope that this service is regulated, to ensure the care and protection of children and young people, be they attending a pre-school, a child care centre or out of school hours care.

The case for regulation was made to the Democrats by the Network of Community Activities, which is working out of NCOSS. It based the case for the regulation of OOSH on three key drivers: the absolute need to protect children of all ages, not only preschool children; the need for a system whereby external complaints and serious breaches can be effectively acted upon; and the need for a consistent regulatory system for all centre-based children's services linked to a legislative base. I trust that the limited scope of the changes that are occurring today does not mean that there will be any tardiness in addressing this issue if this amendment is not passed. I urge that it should be.

**The Hon. PATRICIA FORSYTHE** [12.34 p.m.]: The Opposition accepts the arguments put by the Government and will not support this amendment.

**The Hon. A. G. CORBETT** [12.34 p.m.]: I asked the Minister if she could advise me of the most appropriate legislation for us to look at, to enable us to implement some sort of change. I wonder whether the Minister could obtain advice on that matter. It occurs to me that if there are a number of out of school hours care arrangements that are substandard, safety issues such as fire protection need to be addressed. What does this Government propose to say to parents if their children are badly injured or even killed as a result of substandard fire protection in an unregulated out of school hours care system? Something has to be done about this matter, decisions have to be made—and they have to be made quickly.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.35 p.m.]: I am advised that the care and protection Act is the appropriate legislation, but, as I have made clear, the Government's consideration of the future of out of school hours care services will be based on the report that is being prepared for the Minister. I reiterate that it is not merely a State issue; it is also a Federal issue. There has been a lot of history and background to the development of the national standards. These services are federally funded and the issue needs to be considered bearing in mind the interrelationship between the two levels of government. I might also advise the Committee that the occupational health and safety of premises is regulated.

**The Hon. A. G. CORBETT** [12.36 p.m.]: I would make one additional point. There is a national voluntary code—and I emphasise the word "voluntary". The Minister might pass on to the Minister for Community Services my suggestion that, once again, she write to all out of school hours care places in the State and remind them that there is a voluntary code and that they would be well advised to follow it for the safety of the children.

**Amendment negatived.**

**Schedule 1 as amended agreed to.**

**Schedules 2 and 3 agreed to.**

**Title agreed to.**

**Bill reported from Committee with amendments and passed through remaining stages.**

**ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT)  
AMENDMENT (BLOOD SAMPLING) BILL**

**Second Reading**

**The Hon. E. M. OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [12.40 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

**Leave granted.**

When there has been a road accident involving a casualty or when the police suspect that a driver, or supervisor of a learner driver may be under the influence of alcohol or some other drug, a blood sample can be taken to determine the concentration of alcohol or the presence of any other drug. The requirement on medical practitioners and nurses to take a blood sample for the purpose of determining the concentration of alcohol or the presence of any other drug is described under the Road Transport (Safety and Traffic Management) Act 1999. As the provisions of this Act require a medical practitioner or nurse to take blood samples, it is imperative that the Act provides for blood collection practices that are safe. In recent years new and safer blood collection practices accepted as world best practices have emerged. These practices are being progressively adopted in our State because they significantly reduce the risk of infection transmission from either a needle stick injury, or from the splashing of contaminated blood onto exposed surface areas, such as the eyes.

The relevant current provisions of the Road Transport (Safety and Traffic Management) Act 1999 currently do not provide the framework by which these world best occupational health and safety practices can be employed. Understandably, medical practitioners and nurses support the adoption of the new blood collection practices for the purposes of the Act. The Government is committed to applying world best practice in relation to the potentially dangerous tasks of collecting and dealing with blood samples. Consequently, the Roads and Traffic Authority, the Department of Health and the New South Wales Police Service have been working in partnership to develop and implement a blood sample collection procedure that improves occupational health and safety practices without compromising blood sample evidentiary veracity. The amendments, as outlined in the Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Bill 2000, reflect agency agreement on these issues.

This bill ensures that the procedure for collecting blood, as required by the Road Transport (Safety and Traffic Management) Act 1999, emulates other blood sampling collection procedures in the health system. There are three scenarios provided for under the Road Transport (Safety and Traffic Management) Act 1999 in which a blood sample can be taken for determining blood alcohol concentration or the presence of any other drugs. The first scenario is provided for in section 18 of the Act, where a person who is required to submit to a breath analysis can request that a blood test be made by a medical practitioner of the candidate person's choice, to determine the question of sobriety. The second scenario, as dealt with in section 23 of the Act, relates to the case where a person is taken to a hospital following a road accident. A medical practitioner or nurse must take a sample of the patient's blood for analysis as soon as practicable for the purpose of ascertaining the concentration of alcohol or the presence of alcohol or any other drug. The third scenario is catered for in section 27 of the Act. This is where a person has been arrested and the police inform a medical practitioner that, for the purposes of a sobriety assessment and/or a related drug analysis, a sample of that person's blood must be taken.

Let me explain the current blood-sampling practice common to all three scenarios. Using a hollow-bore needle and syringe a medical practitioner or nurse takes a blood sample from the donor. The sample is then decanted or divided into two equal portions in separate containers. One container is then given to the donor. The other is sent to the prescribed laboratory for analysis. The prescribed laboratory is the Western Sydney Area Health Service, Division of Analytical Laboratories [DAL]. This practice poses health risks in two areas. Firstly, the practice of dividing or decanting a blood sample into two containers requires manipulation or handling of a hollow-bore needle and syringe. This presents the risk of exposure to contaminated blood either through needle stick injury or from blood splash resulting from too much pressure being applied to the plunger of a syringe. In the process of decanting the blood sample many medical practitioners remove the needle from the syringe. The manual removal of a needle from a disposable syringe is inconsistent with infection control standards set out in the Medical Practice Regulation 1998.

Secondly, providing containers of blood directly to the general public poses a community health risk, either from accidental exposure to contaminated blood or from a deliberate criminal act when the blood sample is used to threaten an innocent member of the public. Exposure to contaminated blood leads to a certain risk of contracting hepatitis B, hepatitis C, HIV or other blood-borne virus. Clearly, these risks to our healthcare workers and the community are too high and I present the opportunity, through this bill, to reduce those risks. The key feature of the bill is that the potentially fatal practice of decanting blood samples will cease. Only one sample will be taken and immediately sealed in a container. This will allow the use of closed vacuum blood collection equipment, which allows blood to flow directly from the vein into a closed blood tube, thus eliminating potential needlestick injuries and blood splash. The single, sealed sample is then forwarded for analysis to DAL in accord with established security requirements. Positive samples will be stored for up to 12 months at DAL.

Under the new blood collection system the blood sample will only be divided if the donor applies to DAL for a sub-sample of the original blood sample, for independent analysis. DAL will, on application, divide the blood sample under controlled laboratory conditions and forward the sub-sample to a laboratory or medical practitioner nominated by the donor. Improving the occupational health and safety of staff and the community at large by changing the blood sample collection procedures has some administrative costs. Consequently, a modest fee of \$50 will be made payable where a donor applies for a sub-sample of blood to be made available for independent analysis. This fee will go towards covering the additional costs of administering the new procedures. A regulation would be needed for any fee increase, and the regulation could be disallowed by the Parliament of the day if the increase was considered unreasonable. The fee proposal is consistent with the user pays principle commonly adopted for the provision of government services.

I am also proposing analogous amendments to cognate legislation. These Acts include the Marine (Boating Safety—Alcohol and Drugs) Act 1991, the Marine Safety Act 1998 and the Rail Safety Act 1993 as well as the Rail Safety Regulation 1999. Train drivers and the pilots of ships, ferries, boats and tugs covered by these Acts can be required to submit a blood sample to test for the concentration of alcohol or the presence of other drugs. I am sure that honourable members will agree that this bill incorporates occupational health and safety standards that improve the safety of health care workers and the community at large. At the same time the evidentiary veracity of blood sample analysis, necessary for prosecution purposes, is not compromised. With this bill the Government is taking a lead in Australia to ensure the community has the safest and most reliable means of taking blood samples for drink and drug driving offences. These changes are consistent with this Government's commitment to law and order, to justice and to the health and safety of those health care workers charged with the responsibility of collecting the blood samples as well as to the community at large. I commend the bill to the House.

**The Hon. C. J. S. LYNN** [12.41 p.m.]: The Opposition will not oppose this legislation, which we note covers not only road safety but marine and rail safety as well. We commend the Government for this initiative because it means that drivers of motor vehicles, boats and trains will be prohibited from consuming alcohol before taking charge of those vehicles. The bill reviews and modifies current procedures to ensure a safe, more accurate process whereby blood samples are taken for analysis to determine whether those persons have alcohol or drugs in their system. It amends the Road Transport (Safety and Traffic Management) Act 1999.

The procedures will be applied in two main instances. The first is when the driver of a motor vehicle who is required to undertake a breath test requests that a blood sample be taken for analysis. The second is that a person who is placed under arrest may, as a consequence, be required to give a blood sample. Staysafe report 45, entitled "Injury Prevention and Infection Control in the Taking of Blood Samples from Drivers Suspected of Alcohol or Other Drug Impairment", noted that although that provision has been in operation for some time, in recent years there has been a remarkable change in the dangers to which the people taking the samples may be exposed. Relating to the Traffic Act 1909, page 13 of the report states:

The legislation was developed at a time when knowledge about blood-borne infection was much less than it is today and when blood-borne infections, such as HIV and the hepatitis virus, were either non-existent or their incidence was at very low levels within the community. The circumstances today are very, very different from before. Because of the incidence and threat of blood-borne diseases a different technology is now more popular: the use of vacuum container blood collection methods, or vacutainers.

The first point the Opposition notes about this bill is the length of time it has taken for the Government to introduce it. We note that for some years this Parliament's Joint Standing Committee upon Road Safety—Staysafe—has advocated the need for an amendment to legislation relating to the taking of blood samples from drivers. In November 1998 the Staysafe committee produced a report entitled "Injury Prevention and Infection Control in the Taking of Blood Samples from Drivers Suspected of Alcohol or other Drug Impairment". The report recommended the introduction of legislation in the first days of the Fifty-second Parliament.

It was argued that this legislation was urgently needed to ensure the availability of the latest safety protocols so that medical practitioners and nursing staff would not be exposed to injury or infection while taking blood samples. Far from being introduced in the first few days of the Fifty-second Parliament, we are now in the first few years of that Parliament, and the delay has resulted in unnecessary risk to health workers. The Staysafe report notes:

Under the existing legislation, there is a danger of sharps, or needle stick injury during the processes of obtaining the blood sample and its division into "2 approximately equal portions".

A key recommendation of the Staysafe committee report is:

The Department of Health, in consultation with the New South Wales Police Service, ensure that existing policies and protocols are reviewed, and revised where appropriate, to ensure that medical and nursing staff are not exposed to the risk of injury and infection while taking blood samples from drivers suspected of alcohol or other drug impairment.

The report also notes:

The blood sampling provisions need to be amended to include reference to alternatives to the use of the needle and syringe method and, in particular, the use of vacuum container blood collection methods, or vacutainers.

Vacuum container blood collection methods offer a more appropriate method for obtaining blood that minimises the risk of sharps or needle stick injury and of infection.

The Opposition notes that the terminology used in this legislation indicates that once a blood sample is taken it is placed in a container. If vacuum-sealed containers were used, that would not be necessary. The Carr Government should ensure that the latest technology is incorporated into the occupational health and safety practices of medical practitioners and nursing staff who are required to take blood samples. The latest technology is the use of vacuum-sealed containers and the needle and syringe technique. The Government has missed a vital opportunity in this bill to reform legislation that has an adverse impact on the occupational health and safety principles of medical practitioners and nursing staff who are responsible for drawing blood from drivers. As my colleague in the other place, the shadow Minister for Roads, said, the Carr Government is amending poor legislation poorly. The most important changes have not been included in this bill.

The bill proposes that it is no longer a requirement for the sample which is taken from the driver to be divided into two separate containers. This will eliminate the need, at the time of taking the sample, for the medical practitioner to divide it into two containers, with the possible risk of the person taking the sample

contracting blood-borne diseases or needle-stick injuries. The Opposition agrees that it is necessary for this process to be eliminated, and welcomes the requirement for the sample, if needed, being divided under laboratory conditions. However, this legislation fails to make any mention of the process by which medical practitioners and nursing staff are required to take the blood sample. The Opposition believes that this should be the most important aspect of the legislation. The legislation should require the use of vacuum-sealed containers to draw the sample, except when needle and syringe are necessary, instead of relying on the current system of needle and syringe. Because only one sample will be drawn from the driver, it is also imperative that the container remain tamper-proof.

The Opposition also notes, and objects to, the \$50 fee to be imposed on the donor of the sample should he or she require a portion of that sample. The blood in the sample belongs to the donor of the sample—and under our system of justice such a person is supposed to be presumed to be innocent until proven guilty—so why should they be forced to enter into what can only be labelled a blood buy-back scheme? One can only speculate that if there is a community backlash against this ridiculous requirement in the legislation, we will eventually see a blood cash-back scheme, reminiscent of that other great con pulled by this Government over the M4 and M5 cashback. I would also be interested to know which Rhodes scholar in the Government worked out the formula to justify a \$50 fee.

Under the current legislation two samples have to be taken, which means that two containers are used and the samples are double handled. Under the current system the owner of blood can have it for free. Under the proposed legislation only one container is used and handling is simplified—but it will now cost \$50. Every inch a Labor formula, that one! The Government has extended on that old adage "if it moves—tax it!" Now we have a new term that only this high-taxing Government could implement: "if it bleeds—tax it!" We are also concerned at the opportunity the legislation provides for the Government to increase the fee.

Schedule 3 [2] will insert in the Act a new subsection (9) of section 13, which enables a donor to request portion of the sample, "on payment of an application fee of \$50, or such amount as may be prescribed by the regulations". This is an open invitation for the highest taxing State Treasurer in this country to extract more money—often from those who will be least able to afford it. We are also concerned about the requirement in the legislation to impose a time limit of 12 months for a person to apply for their sample. The courts in this State are so clogged that it is reasonable to assume that this is a timeframe that our justice system will often not meet, and once again our citizens could well be seriously disadvantaged. I again echo the sentiments of the shadow Minister in the other place when he said that this Government is amending poor legislation poorly.

**The Hon. I. COHEN** [12.48 p.m.]: The Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Bill institutes a new sample collection procedure for the collection of blood from road users, usually drivers who have been involved in a traffic accident or people who are alleged to have committed traffic offences. The bill also provides that blood may be taken for testing to ensure marine vessel and train safety. The purpose of the sample is to enable the blood to be tested to determine whether alcohol or any other drug is present in the person's blood at the relevant time. The current practice is that one sample is taken by the health care worker and divided into two equal parts. One part is then taken for analysis and the other part is given directly to the donor. The main purpose of the bill is to create a new blood sampling procedure, under which there will no longer be a requirement for the sample to be divided and one portion given directly to the donor.

Instead, the bill allows for the donor to apply for portion of the sample to be independently tested provided a \$50 fee is paid. There is no provision in the bill for any part of the sample to be physically provided to the donor. The reasons for the introduction of the bill are not immediately obvious. At first sight it might seem that the new process is necessary for occupational health and safety reasons. This was the justification given by both Government and Opposition members. The Greens agree that it is important that appropriate protection from needle-stick injuries and blood splash is available for health care workers. We are not advocating any testing method which could result in preventable occupational health and safety risks. However, there are other options which could result in two separate samples being taken safely without the risk of injury occurring.

The Government claims that this legislation was recommended by the Staysafe committee, but my understanding is that the Staysafe committee did not recommend the particular option adopted in the bill. The most plausible explanation is that by reducing the number of samples that need to be taken, the bill is really a cost-cutting exercise disguised as an occupational health and safety measure. The major concern of the Greens is that by making independent analysis dependent on the payment of a \$50 fee, the bill is inequitable and will result in a breach of the civil liberties of the donor. This concern is supported by the New South Wales Law

Society and the Council for Civil Liberties. In a letter to the Greens on 6 September, Sarah Hopkins of the New South Wales Council for Civil Liberties said:

The Bill in its present form clearly raises civil liberties concerns and appears to be a disproportionate response to the issues raised by the Infection Control Guidelines.

In a letter to the Minister for Roads, John North, President of the Law Society of New South Wales, said:

The requirement that donors or suspects must pay a fee to enable a portion of the sample to be made available for independent analysis is not supported.

Mandatory breath analysis, mandatory urinalysis and mandatory blood analysis constitute an exception to the common law, which does not require a citizen to provide evidence that may lead to his or her conviction of an offence. To impose a fee to enable a person to obtain a portion of the sample for independent analysis is not, with respect, a preservation of individual civil rights. Further, there is a clear conflict between the current Bill and the Crimes (Forensic Procedures) Act 2000 which contains the express provision that no charge is to be made for providing forensic material to suspects, offenders or volunteers.

The Greens will support the amendments proposed by the Hon. R. S. L. Jones and the Hon. Dr A. Chesterfield-Evans, which are intended to make the bill more equitable and ensure that civil liberties are not infringed.

**The Hon. J. H. JOBLING** [12.52 p.m.]: As my colleague has already stated, the Opposition will not oppose this legislation. It is apparent that it is long overdue. The bill deals with some new technology, specifically the use of vacuum sealed containers for the storage of blood samples. The Opposition considers that the Government should have enshrined in this legislation the use of vacuum sealed containers, which are in common usage in medicine today, for storage and, if necessary, for the taking of an on-site sample by the needle and syringe technique that is currently in use. The bill introduces a number of changes. In particular, it provides that a sample taken from a driver no longer has to be divided and put into two separate containers. It has been suggested that this will eliminate the need for a medical practitioner to divide the sample, thereby avoiding the potential risk of contracting blood-borne diseases by the practitioner and police officers or people nearby if the needle and syringe separate. We hope the bill will also reduce the probability of needle-stick injuries. It is clearly a failure of the legislation that it does not require that vacuum sealed containers be used to draw the sample.

A concern that has been expressed by my colleague in the other place relates to the length of time for a matter to come before the courts. Great care needs to be taken to ensure the integrity of a sample if it is to be relied on in court and the case takes up to or more than 12 months to come on for hearing. This matter has not been properly addressed. I fear that when such cases arise, lawyers may take advantage of that issue. I principally speak on this matter because it relates to Staysafe 45, a report of the Joint Standing Committee upon Road Safety, of which I was a member at the time. Staysafe 45 is a particularly important report which dealt with the present danger of injury and infection, the inadequate response to address the danger, as well as workplace safety and the appropriate protocols for the taking of blood samples. The report also dealt with a legislative amendment to be based on accepted scientific research, an appropriate timetable and the need for remedial management training.

The Staysafe committee commenced its investigation in 1997 and undertook a series of visits throughout New South Wales, particularly to regional New South Wales and a number of the non-metropolitan areas, to examine road safety matters. During the visits, many people in the health field, particularly those in the medical and nursing professions who are involved in the taking of blood, expressed their concerns to committee members. They drew attention to the potential danger of injury and infection associated with the taking of blood samples from drivers suspected of alcohol and other drug-related impairment. During that investigation the committee also investigated and reviewed the adequacy of response of specific officials of the Department of Health, the Roads and Traffic Authority and the New South Wales Police Service in addressing the safety issues involved in the taking of blood samples from drivers suspected of alcohol or drug-related impairment.

Staysafe 45 was a comprehensive report. It is interesting to note that in November 1998 Staysafe 45 addressed the concerns that were put to the Committee during the two years of its investigation. The report proposed that remedial steps be taken to ensure that appropriate protocols were put in place so that medical and nursing staff were not exposed to the risk of injury or infection while taking blood samples; and it also proposed an appropriate timetable for the conduct of scientific research and development of protocols for taking blood samples from drivers to enable an amending legislation to be introduced in the first days of the Fifty-second Parliament. It may be a little bit later than expected, because, obviously, we are obviously beyond the first days of that Parliament, but the report is the genesis of this legislation. I will refer briefly to the committee's six recommendations and the wording which supports the legislation. Recommendation 1 is:

The Department of Health, Roads and Traffic Authority and New South Wales Police Service review current management practices to ensure that the particular circumstances of an inadequate management of the process to address the very real danger of sharps injury and the potential exposure to blood-borne infection of medical and nursing staff who take blood samples from drivers arrested by police on suspicion of alcohol or other drug-related impairment and drivers who are admitted to hospital after a road crash is not repeated with regard to other issues of immediate risk of injury or infection.

Recommendation 2 is:

The Department of Health, Roads and Traffic Authority and New South Wales Police Service ensure that the Departmental executives are cognizant of issues of workplace safety (i.e., occupational health and safety matters) involved in the taking of blood samples from suspect drivers.

The third recommendation was that the Roads and Traffic Authority, in consultation with the Department of Health and the New South Wales Police Service, ensure that appropriate research is undertaken to provide an accepted scientific basis for a legislative amendment to the Traffic Act 1909 to enable the taking of blood samples from drivers who are suspected of alcohol or other drug impairment. The fourth recommendation was that the Roads and Traffic Authority, the Department of Health and the New South Wales Police Service ensure the establishment of an appropriate timetable for the conduct of scientific research and the development of protocols for the taking of blood samples from drivers to ensure the introduction of amending legislation in the Fifty-second Parliament.

The fifth recommendation went further and recommended that the Department of Health, in consultation with the Police Service, ensure that existing policies and protocols are reviewed and revised where appropriate to ensure that medical and nursing staff are not exposed to the risk of injury and infection while taking blood samples from drivers suspected of alcohol or other drug impairment. The final recommendation was that the Roads and Traffic Authority, the Department of Health and the New South Wales Police Service undergo remedial training to ensure that government officials within the chain of managerial responsibility who have been identified as being culpable for the delay in addressing the dangers of injury and infection associated with the taking of blood samples from drivers suspected of alcohol or other drug impairment have the necessary skills and knowledge to effectively and efficiently perform their duties.

In general terms the recommendations of Staysafe 45, which was ordered to be printed on 25 November 1988, are the basis of the bill. We are concerned about dealing with a vacutainer for the taking of blood and we are extremely concerned, as my colleague has said, about drivers giving blood for free. As one of my colleagues in the other place said, "Give blood for free, but drivers pay to get it back." The \$50 fee is an outrageous charge! We are concerned about the integrity of the samples and how they will be maintained, because lack of proper maintenance will lead to a court challenge. We believe that the Government proposes to introduce amendments to the legislation. We have not seen them, but I look forward to seeing them and finding out what they relate to. The Opposition does not oppose the legislation. We are not happy about the containers and the integrity of the sample, nor are we happy about the \$50 fee. As indicated, we will most likely support the amendments of the Hon. R. S. L. Jones in that regard.

*[The Deputy-President (The Hon. Helen Sham-Ho) left the chair at 1.03 p.m. The House resumed at 2.30 p.m.]*

**The Hon. R. S. L. JONES** [2.30 p.m.]: This bill institutes a new blood sample collection procedure developed by the Roads and Traffic Authority, Department of Health and the New South Wales Police Service and is aimed at improving occupational health and safety practices without compromising sample evidentiary veracity. Instead of a nurse or medical practitioner being required to divide blood samples into two equal portions and put those portions into separate containers—one for the donor and one for analysis at the time the sample is taken—samples will now be divided only if the donor applies for a subsample for independent analysis, which is done under controlled laboratory conditions. A \$50 fee will now be charged to the donor for providing a sub-sample to cover the additional administrative costs incurred through the introduction of the new procedures. Unfortunately, the provisions contained in the bill do not ensure beyond reasonable doubt that the veracity of blood samples will be maintained, and the new \$50 application fee places an unreasonable burden on donors.

I understand that my colleague the Hon. Dr A. Chesterfield-Evans has foreshadowed that he will move amendments in Committee that will ensure that if an accused person requests a sample the doctor must take and provide him or her with an additional sample as well as written information on how to submit the sample for laboratory analysis. Of course, I will support those amendments and I urge all honourable members to support them. However, if those amendments are not successful I foreshadow that I shall move amendments. If the amendments to be moved by the Hon. Dr A. Chesterfield-Evans are successful, donors will no longer be given

half of their blood sample at the time it is taken. The amendments provide that upon application for further analysis donors will need to be provided with a record of their sample, as they should be, to ensure that it is correctly identified.

It is unreasonable also to require donors to pay the \$50 application fee as such provisions conflict with those contained in the Crimes (Forensic Procedures) Act, which states that no charge is to be made for providing forensic material to suspects, offenders or volunteers. The Law Society's Criminal Law Committee considered the provisions of the Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Bill. The committee makes no objection to the provisions of the bill that will enhance the safety of health care workers and the community, and protect the right of the person from whom the sample is taken to have a sample independently analysed by another laboratory. However, the Law Society does not support the requirement that donors or suspects must pay a fee to enable a portion of the sample to be made available for independent analysis.

The Law Society states further that mandatory breath analysis, urinalysis and blood analysis constitute an exception to the common law, which does not require a citizen to provide evidence that may lead to his or her conviction of an offence. The Law Society states further that to impose a fee to enable a person to obtain a portion of the sample for independent analysis is not a preservation of individual civil rights. The Law Society stated further that there was a clear conflict between the current bill and the Crimes (Forensic Procedures) Act, which contains the express provision that no charge is to be made for providing forensic material to suspects, offenders or volunteers. Therefore, I will be moving amendments in Committee to ensure that blood donors must be given a receipt that identifies their blood sample and they will not be required to pay the \$50 application fee. I understand both the Government and the Opposition will support those amendments, for which I am grateful. Of course this is on the assumption that the amendments to be moved by the Hon. Dr A. Chesterfield-Evans are unsuccessful.

**The Hon. Dr P. WONG** [2.37 p.m.]: I support the principles of the bill. The Minister said in his second reading speech that an objective of the bill requires a medical practitioner or a nurse to take blood samples. I agree that it is imperative that legislation provide for safe blood collection practices. It is important that world's best practice is being adopted in Australia. However, I share some of the concerns of the Hon. Dr A. Chesterfield-Evans and the Hon. R. S. L. Jones on two points. First, I believe that the \$50 fee is excessive and, second, I believe that although the spirit of the bill is correct the practice of blood collection has changed in recent times. I inquired of a few specialists before proceeding to make my contribution to this debate. I believe the Hon. Dr A. Chesterfield-Evans mentioned earlier that nowadays blood collection is carried out using a vacutainer needle, which has two sharp edges.

On one end the sharp needle is used to puncture a vein and the other end goes into a vacutainer tube. At the other end where the needle goes into the vacutainer tube there is a latex sheath, which protects the needle from exposure to air, dirt or the external environment as it is being pulled out. Just half an hour ago I checked with a major pathology laboratory. Now there is virtually no incidence of needlestick injury from the vacutainer needle during the collection of blood, but sometimes accidents happen in the disposal of needles. Therefore, nowadays it is perfectly safe to collect blood and to put it into two containers. There is no increase in risk whatsoever. When the bill was being drafted it was done in the right spirit according to the practices at the time but it probably did not take into account modern technology and the sheath to protect the sharp end of the needle so that injury is not caused to nurses or doctors. Therefore, I am inclined to support some of the foreshadowed amendments.

**The Hon. E. M. OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [2.42 p.m.], in reply: I thank all the speakers who have contributed to the debate.

**Motion agreed to.**

**Bill read a second time.**

## **LEGAL PROFESSION AMENDMENT (INCORPORATED LEGAL PRACTICES) BILL**

### **Second Reading**

**Debate resumed from 23 June.**

**The Hon. J. M. SAMIOS** [2.43 p.m.]: The purpose of the Legal Profession Amendment (Incorporated Legal Practices) Bill is to allow solicitors to practise in incorporated limited liability companies governed by the

Corporations Law rather than only as partnerships. Solicitors can already practise in multidisciplinary companies under part 10A of the Legal Profession Act 1987. However, this has not widely occurred because solicitor companies have unlimited liability and restrictions on membership prevent fundraising from the public. Under these proposals an incorporated company of itself will not require a practising certificate or a licence although individual solicitors within the company will be required to hold practising certificates. Only one director must be a solicitor director holding a practising certificate, as opposed to the 51 per cent majority ownership by qualified practising solicitors presently required.

The bill is designed to regulate multidisciplinary practices and it places obligations on solicitor directors of corporations to ensure that solicitor employees are properly supervised and to maintain ethical and professional standards. Solicitors employed by companies will be required to hold insurance and to contribute to the Solicitors Fidelity Fund. The Law Society and the Legal Services Commissioner will have new powers to review an incorporated legal practice. The Australian Securities and Investments Commission will oversee incorporated practices under the Corporations Law and the Supreme Court will also be given supervisory powers. Such practices will be vicariously liable for any omission or dishonest conduct by solicitors. The current partnership structure is largely obsolete as many practices have offices in several cities or countries, causing decision making to be difficult.

The bill will allow incorporated companies to expand and compete with other occupational business. The flexible corporate structure will allow Australia to become the legal hub for the provision of legal services in the Asia-Pacific region. The bill preserves the ability of a solicitor to undertake pro bono work, and safeguards presently afforded to clients of solicitors will be maintained. Incorporation of legal practices may lead to more transparent management structures and enhance the accountability of individuals for the management of a practice. Of course, there is the danger that consumer protection may be compromised unless appropriate safeguards are in place. The insurance requirements and legal oversight bodies of New South Wales currently cannot completely protect the client from dishonest or fraudulent practice by a solicitor. Small firms may be disadvantaged by incorporated legal firms driving out competition by offering discount prices. Nevertheless, the advantages provided by the bill—I have referred to pro bono work and a more transparent management structures—are very positive. The Opposition will not oppose the bill but I make the point that implementation of the bill must be carefully monitored.

**The Hon. HELEN SHAM-HO** [2.48 p.m.]: I vehemently and vigorously oppose the Legal Profession Amendment (Incorporated Legal Practices) Bill. I do not understand why the Opposition would support it. The legal profession is a particular profession in which ethics and commitment to the public good must be paramount. Currently, law firms can be partnerships only, not corporations. This is for good reason. A partner's acts bind the partnership and other partners. Partnerships do not allow for limited liability, thus providing an incentive to partners to ensure that other partners maintain their integrity. For instance, where one partner incurs debts the other partners can be personally liable for the repayment of the debts should the original partner not meet his or her obligation. In contrast, the corporation is regarded as being a legal person. There is not the same system of mutual obligation as there is in a partnership. The liabilities of companies are usually limited, and personal liability is confined to applying to directors in particular circumstances.

Consequently, there is a markedly different system of accountability, and I emphasise "accountability". I have very serious concerns that changing the structure of law firms so as to allow them to be corporations within the scope of the Corporations Law will allow lawyers to hide behind the corporate veil, making it easier for complaints about conduct to be evaded. We cannot encourage the proliferation of dubious dealings in our legal profession by allowing this bill to pass. The name of the profession has already been scarred for a long time now and this will worsen the situation. Mr Steve Mark, this State's Legal Services Commissioner, criticised the bill for its potential to create "an ethical minefield" when he was interviewed on 19 May by the *Australian Financial Review*.

In that article Mr Mark gave examples of several other common law jurisdictions—America, England and Canada—all of which have rejected the proposal to incorporate law firms. Mr Mark stated further that he had not seen sufficient analysis of the proposal. This is a serious indictment of the bill. Similarly, the New South Wales Bar Association, the Law Institute of Victoria, the New South Wales Legal Reform Group and other Australian groups representing the legal profession have voiced their opposition to the incorporation of law firms. A letter I received from the New South Wales Bar Association stated:

The New South Wales Bar Association does not support the Bill on incorporation of legal practices. The Bar Council is not persuaded that the Bill would result in any benefit to the public.

No doubt the issue of public interest is very important. Why would anyone want to pass a bill that would so drastically alter the provision of legal services in this State? The proposal at the core of this bill has been

rejected outright by other jurisdictions—not just one, but several. To my knowledge, no other jurisdiction has a comparable scheme. This is the first time anywhere in the world that there has been a proposal for this type of incorporation. As Australia's first Asian-born member of Parliament I am certainly not afraid of being a pioneer. However, when there are so many indicators that the path ahead is fraught with countless problems, I do not see any reason to pursue it. I would especially like to emphasise that corporations have a responsibility to make money for shareholders. How is it possible to balance this responsibility with the duty to the court to be worthy of public confidence and to serve members of the community responsibly?

A letter that I received at the end of June from the New South Wales Legal Reform Group rightly asserted that lawyers should be the gatekeepers of the justice system and they must be responsible for the administration of justice. The group points out that it is very difficult for solicitor-directors to serve two masters. On the one hand, the shareholders want monetary returns from the company and on the other hand there are the fundamental principles of justice, ethics and professional responsibility. There may be a conflict of principles. For example, higher fees can be charged if cases are extended, thus generating more money for the firm, which in turn keeps the shareholders happy. However, it is possible that a quick out-of-court settlement would be preferable for a client and the effective administration of justice.

On Tuesday 10 October I had the benefit of hearing the concerns of the New South Wales Legal Reform Group in person when a representative of the group briefed members of the crossbench, a number of whom I believe will oppose this bill as a result of that briefing. Additional issues that were raised by the group were that this bill, if passed, would allow the Legal Profession Act of this State to override the uniform Australia-wide Corporations Law. I refer honourable members to proposed section 47S. Perhaps this sounds benign, but the reality is far from that. The Legal Profession Act has been found by the High Court to be defective, ambiguous and illogical. If the bill passes, complaints against solicitor-directors for dishonesty, failure to account, malpractice and the like would be referred to the Law Society, which may—and I emphasise the word "may"—refer them to the Australian Securities and Investments Commission. Traditionally, the pictorial representation of personified justice is a woman, blindfolded, holding the scales of the law in one hand. The blindfold symbolises the fact that the law and the administration of justice should be impartial. However, this bill, if passed, will discard the blindfold and this time-honoured principle.

**The Hon. Dr P. Wong:** Substituting a dollar sign.

**The Hon. HELEN SHAM-HO:** Yes, you are right for a change. I acknowledge that there are provisions within the bill that aim to retain a high standard of professional obligations and privileges. However, I reiterate the concern that professional obligations may take a back seat to the driving force of investor gains. I am of the opinion that the present partnership arrangements function well enough. Indeed, I believe that there is no need to fix something when it is not broken—I always say that, especially when talking about our constitutional system—particularly when there is evidence to suggest that other similar jurisdictions have considered and rejected outright such a proposal. Therefore, we should not adopt it. The main supporter of this bill from within the legal profession appears to be the Law Society of New South Wales.

**The Hon. P. J. Breen:** The only supporter is the Law Society?

**The Hon. HELEN SHAM-HO:** Yes, I think so.

**The Hon. P. J. Breen:** Nobody else, only the Law Society?

**The Hon. J. J. Della Bosca:** What is wrong with the Law Society?

**The Hon. HELEN SHAM-HO:** There is something wrong with it. It is this bill. The only letter I have received from the Law Society relating to the bill states that "the society supports the Incorporation Bill as a significant reform to the regulation of profession". However, I have been perturbed that several requests I have made for further information and for the Law Society to explain its reasoning have gone unanswered; that is why there is something wrong. Usually the Law Society is very forthcoming in relation to requests for information but on this occasion it has not been forthcoming. However, these are not my only concerns with the bill. New section 47C (1) stipulates that an incorporated legal practice is a corporation which provides legal services. New section 47C (2), however, concerns me because it states:

... any incorporated legal practice to provide any other service and conduct any other business that the Corporation may lawfully provide or conduct (other than a managed investment scheme).

In other words, the law firm becomes any other firm but a law firm.

**The Hon. Dr P. Wong:** Such as McDonald's, a liquor store or a supermarket.

**The Hon. HELEN SHAM-HO:** I believe that this practice would unduly confuse members of the public. Surely one goes to see a lawyer because one needs help with legal matters. In a corporation where there are a number of professions—like a supermarket—some of whom are lawyers, there are different, sometimes mutually contradictory, ethical standards depending upon the roles of the people in the corporation. I question the rationale of this provision. Would it not be possible for non-lawyers to be mistakenly regarded by members of the community as lawyers because they work for an incorporated law firm? By way of example, I would like to refer to an experience I had a few months ago with a migration agent who tried to assert that the migration agency of which he was a director was a law firm.

**The Hon. J. J. Della Bosca:** A solicitor?

**The Hon. HELEN SHAM-HO:** He asserted he was a solicitor from a law firm. As it turned out, he was not a solicitor, nor was his firm a law firm.

**The Hon. J. J. Della Bosca:** False pretences.

**The Hon. HELEN SHAM-HO:** Yes, but he led some Chinese-speaking constituents of mine to believe that he was a lawyer. That is completely unacceptable, misleading and unethical. As the Minister said it is really fraud. With this incorporation it is easier to have that perception. Should this bill be passed, I am afraid that more people in the corporate sector may hold themselves out to be legal practitioners when they are not. Because, under this bill, an incorporated legal firm can engage in any other business—except a managed investment scheme—I am particularly worried that a lot of legal professionals working for an incorporated legal practice may create that perception, although I believe they may not try to hold themselves out to be legal professionals. That is a problem. In a company such as that the delineation between the two professions will be too blurred. The potential for abuse and the potential to confuse the public are in my view too great. As a former lawyer I can only stress the vital importance—

**The Hon. J. J. Della Bosca:** Once a lawyer, always a lawyer.

**The Hon. HELEN SHAM-HO:** I am not practising law any more. I have not been struck off; I have surrendered my practising certificate at this time so that I can concentrate on legislating. I can only stress the vital importance of retaining one's name, integrity and the confidence of one's clients. The duty of a lawyer is to serve the community and not to generate profits for shareholders. This bill severely undermines the philosophical basis of legal practice and I cannot support it. I hope other sensible members will vote against it also.

**The Hon. R. S. L. JONES** [3.02 p.m.]: I oppose the bill. I have a number of concerns about it, as do other crossbenchers. I seek advice from the Attorney General on the following points. The legal system is based on the premise that lawyers owe a duty to the court, then to their clients and then to the public. The paramount loyalty lies with the court, as demonstrated by the phrase "servants of the court", which lawyers often use to refer to themselves. The New South Wales Legal Reform Group have advised that this bill will jettison public confidence in the court system, indeed the entire legal system, because as directors of incorporated law firms, lawyers will owe paramount loyalty to the company and not to the court.

Although I have advised that the Corporations Law will be subject to the provisions of proposed section 475, I accept the view of the High Court that the Act is defective, ambiguous and illogical. The question is: will the oath that lawyers take when they become lawyers, to be servants of the court, be undermined by their duty to their shareholders? The advice I have received so far is that no-one knows. This bill does not exist in any other jurisdiction. It has been rejected in the United Kingdom, the United States of America and Canada, for very good reasons. This is the only jurisdiction that I know of in the world that will have such legislation. I believe the Opposition should have had a much closer look at it before supporting it so willingly.

I am puzzled by the claim that the Australian Securities and Industries Commission [ASIC] will not be able to investigate breaches by lawyers in their capacity as directors, as it can other directors of incorporated companies. I have been told that this is because lawyers will claim commercial in-confidence and legal privilege in order to shield their wrongdoings. The Attorney General's Department said this is not the case, that ASIC could investigate wrongful conduct in their role as directors and that the Legal Services Commission could investigate wrongdoing in their role as solicitors. I would like some clarification of that issue before debate on this bill is concluded.

Claims have also been made by the Legal Reform Group that there is an underlying motive in the Law Society's endorsement of this bill, as the society represents members at all costs. I am not convinced of this, but want to clarify another issue raised that lawyers cannot have criminal charges brought against them but are generally dealt with in the civil context by way of fine only. I am not sure of that and would seek clarification. I believe that the Attorney General and his department have a duty to members of this House to ensure that we do get clarification on these issues.

Considerable concern was expressed about this legislation by the New South Wales Legal Services Commissioner, Steve Mark. He was concerned that the legislation would not totally protect consumers, and that some of its regulatory provisions appeared to have been inadequately thought through. He suspected he would find it harder to extract information from incorporated legal practices and that it would be very easy for lawyers from incorporated practices to avoid complaints about their conduct. He pointed out that the only backer of this bill is the New South Wales Law Society—the only backer. It is opposed by the New South Wales Bar Association, by the Law Institute of Victoria and by several other constituent bodies of the Law Council of Australia that discussed the scheme soon after it was unveiled in March.

Mr Mark said he was uncomfortable philosophically with the shift from profession to business because he did not believe it was possible for a profession to be businesslike. This is the first time similar legislation has been introduced anywhere in the world, the first time that lawyers have been incorporated. We should not be letting this bill pass without proper debate and without having a number of questions cleared up. The bill is being rammed through and there may well be very serious problems as a result of the bill's introduction. I do not think the Special Minister of State has any idea of the ramifications of the legislation. He is looking at me benignly and I am quite sure he has no idea. I hope he gets some good advice so that he can answer some of the questions I have asked. I look forward to the ministerial advisers providing advice on the matters I have raised.

A number of law firms are also concerned that trying to reorganise themselves to fit the legislation would compromise their national culture and that there are cross-border difficulties. Despite supporting the scheme, seven of the national firms interviewed were worried that the inconsistent regulatory regimes in other States could cause internal organisational problems for incorporated legal practices. I believe there are serious questions about this bill that have not been answered. I do not believe that the shadow Minister in the other place, Mr Hartcher, has been diligent in searching out the problems with the legislation and obtaining answers. He reacted very quickly to support it, even though these questions had been raised. Merely because the Law Society of New South Wales—which we often support, I might say—wants the legislation that does not mean to say it is good legislation.

It may be the case that, if the legislation is passed—as it may well be, with the blind support of the Coalition—clients would be much worse off as a result. I suggest it will be shown in the future that the fact that there might be problems associated with the bill was not raised by either the Coalition or the Government, but by the crossbench members—once again. I oppose the legislation.

**Ms LEE RHIANNON** [3.08 p.m.]: The Greens strongly oppose the bill. It will undermine the integrity of the legal system and that has already been widely recognised. I understand that has been recognised by the New South Wales Legal Reform Group. I have been told that Mr Murray Gleeson, Chief Justice of the High Court, Mr Daryl Williams, the Federal Attorney General, and Mr Steve Mark, New South Wales Legal Services Commissioner, have all publicly expressed their concerns about these changes.

Put simply, the bill will allow legal practices to incorporate for the first time. At the moment, in theory, the first duty of lawyers is to the Supreme Court and the justice system. They owe a fiduciary duty to the court and the court trusts them to act as the gatekeepers of the justice system. Obviously it does not always work in that way, but that is the intention and that is the standard to which they can be held accountable. However, under this bill that notion has been totally overturned. Lawyers will come to owe a fiduciary duty to the shareholders of their companies because, according to Corporations Law, the interests of the company and shareholders are paramount.

What an extraordinary situation! The potential ramifications of lawyers being primarily accountable to shareholders are enormous. For instance, let us contemplate how that could play out. Will the incidence of speculative integration grow in the hope of big financial return and consequent share price boost? Will firms be reluctant to take on cases that could adversely affect the interests of their shareholders? Will the constant pressure for growing financial returns to prop up share prices push lawyers to cut corners even further and undermine the integrity of the justice system? If companies are publicly listed, there will be constant pressure to maintain or grow share prices. What will that mean for the business of the firm?

The answers to those questions are, obviously, unknown; no-one can be certain, we cannot predict the future. We can predict that the winners will be those who currently have a financial stake in a big law firm, quite likely at the expense of everyone else and at the expense of our legal system. This is most undesirable legislation. Earlier the Hon. R. S. L. Jones raised a telling point when he said that the people sitting at the table of the House do not realise the full ramifications of their actions. We hope that there will be a pause in proceedings and that the Government will consider whether it is wise to make New South Wales an experiment for a system of law that has not been tried out anywhere in the world.

**The Hon. I. COHEN** [3.11 p.m.]: I concur with the comments of Ms Lee Rhiannon. It is quite clear that the Greens oppose the bill, which is regarded a quite inappropriate and odorous to many in the community. The purpose of the bill is to enable solicitors who practise as sole practitioners or in partnership to have the option of incorporating. The bill is supported by the legal profession—which I think is unfortunate, and I am sure that some members of the legal profession will have something to say about that—and both the big parties. The justification for the bill is that legal practice is no different from any other business and, therefore, lawyers should not be prevented from working under the same conditions as apply to other businesses.

Recently I had a discussion about this bill, and a person, who will remain anonymous, recounted the story of a law lecturer who said that companies are the greatest vehicle for fraud ever created. With the legal profession heading in this direction we will certainly see more of that. It is quite tragic. The Greens do not agree with this proposition. Legal practice is not the same as other businesses. Solicitors perform a very important role in the justice system. The services provided by solicitors are a major determinant of the quality of justice which is available in our society. The major problems with the bill have been identified by the Legal Reform Group.

When solicitors become directors of a company their fiduciary duty is to the company and its shareholders rather than the court. The nature of the duty is to maximise the amount of profits that are available for distribution to shareholders. Solicitors fees are already exorbitant but the inevitable consequence of this bill is that fees will rise. I recall an occasion when the Prime Minister, John Howard, was extolling that view that we should make our society one for shareholders. We are seeing a real move of corporate responsibility away from the public, away from the workers in specific industries, and towards the shareholders and those at the top of the company. It is the directors who are gaining so much and it is the society that loses. Society is moving in a very unhealthy direction when responsibility is given solely to shareholders.

If solicitors are required to practise law to achieve maximum profits, a clear conflict arises. The proper administration of justice requires access to the courts for everyone, not just the rich. There is nothing in the bill which will improve the quality or availability of justice in New South Wales. The bill has been criticised by the Legal Services Commissioner, Steve Mark. Mr Mark investigates complaints against lawyers and is responsible for gathering the evidence necessary to successfully prosecute lawyers who have committed fraud and other crimes. He suggested that by allowing solicitors to hide behind a corporate veil the bill will make his difficult job even harder. The *Australian Financial Review* of 19 May reported:

The NSW Legal services Commissioner, Mr Steve Mark, outlined a string of concerns with the proposed legislation, saying he was not yet convinced it would totally protect consumers and that some of its regulatory provisions appeared to have been inadequately thought through.

He suspected he would find it harder to extract information from incorporated legal practices and it would be very easy for lawyers and their incorporated practices to avoid complaints about their conduct ...

But he said he had decided to publicly express his views in the hope that it would trigger a deeper debate about the implications of moving from a partnership structure to corporation.

Even though he is the governments top regulator of the profession, he said he had "not seen any analysis of what it [incorporation] means or what its impact might be, notwithstanding the fact that the Americans have rejected it, the English have rejected it, the Canadians have rejected it and NSW has not" ...

Earlier in the interview, Mr Mark was more forthright in his criticism of the scheme, saying that incorporation "could ultimately damage or have a negative impact on consumers"; that it was "an ethical minefield"; and that "the only people who really seen interested are the big firms".

He said he was concerned about the proposal to make a solicitor-director liable for the conduct of other solicitors because he believed this might place the solicitor-director in a conflict of interest.

Solicitor-directors would have a responsibility to make money for shareholders and he was concerned that this might lead them to enter arrangements with people who might be acting contrary to solicitors' ethics or rules.

"What are you going to do if it is going to be beneficial to shareholders? Is there a conflict and how are you going to cope with that problem?" he asked.

This bill makes it easier for solicitors to rip-off their clients through overcharging and fraud. It will make justice more expensive and lawyers less accountable. It does nothing to improve the administration of justice; there is nothing in it for ordinary people. Lawyers make up a large proportion of the people elected to this place; perhaps that is why the bill has the support of both the Government and the Opposition. The Greens are strongly opposed to the bill.

**The Hon. P. J. BREEN** [3.17 p.m.]: For this occasion I have worn the new Law Society tie. I do not know whether it is part of the corporate push or whether the society simply got sick of the old polyester tie. It is made of silk and it has the Law Society label on the back.

**The Hon. J. H. Jobling**: Made in China?

**The Hon. P. J. BREEN**: I am not sure where it was made, but you can be sure it was not Italy.

**The Hon. M. R. Egan**: I think their taste is in their mouth. It is an appalling tie. I was going to take you to task for it earlier, but I thought better of it. But now that I know the purpose for which you are wearing it I feel free to say that it is a terrible tie.

**The Hon. P. J. BREEN**: I am honoured that the Treasurer has seen fit to recognise that it is a crook tie. I bought it only this morning and am wearing it only for the occasion of this debate. After purchasing the tie I had an appointment with members of the Bar Association whom I asked about their association's tie. I was told that its tie is the old polyester model. However, the members said that they oppose the Legal Profession Amendment (Incorporated Legal Practices) Bill, and on the strength of that they gave me a Bar Association tie.

**The Hon. J. H. Jobling**: You better declare as a pecuniary interest.

**The Hon. P. J. BREEN**: It will be on my pecuniary interests form. By the time that form is due to be signed, which will be about this time next year, I suspect that I will be a member of the Bar Association and not the Law Society, and perhaps the principal reason for that is this bill we are now debating. When former Attorney General Jeff Shaw introduced the bill he said:

Some might regard this bill as a little radical but, subject to much thought and consideration, I commend the bill.

The former Attorney was right: this is a radical bill. He had every reason to be concerned about it. As previous speakers have said, objections to the bill have been raised by various people in the legal profession, including the Chief Justice of the High Court, Murray Gleeson; the Federal Attorney General, Daryl Williams; and the New South Wales Legal Services Commissioner, Steve Mark. Even the New South Wales Bar Association has expressed its concerns, although, as a member of the Law Council, I question whether the Bar Association's objection is a genuine one. I raised that question this morning with Philip Selth of the association. He said the association reserves the right to take a different position from the Law Council on various issues. He emphasised that this bill is one of those issues where the Bar Association strongly disagrees with the position of the Law Council and, indeed, with the Law Society.

**The Hon. M. R. Egan**: You could never accuse barristers of being at the forefront of reform. They are a very privileged little cabal.

**The Hon. P. J. BREEN**: It would be hard to describe this bill as reform, particularly in the context of its introduction by the former Attorney General. The bill permits multidisciplinary practices, such as lawyers practising with accountants. The big plan is that when this bill is enacted, lawyers all around the country will be able to operate not only nationally but in multidisciplinary practices and basically with impunity. The bill will effectively entrench the financial security of lawyers. That is the one of the two cruxes of the bill. Once law firms become incorporated, partners will have a thick corporate veil that will protect their personal assets. Law consumers fear that the corporate veil will stretch so far that it will allow lawyers and their incorporated practices to avoid responsibility for acts of negligence and dishonesty.

Incorporation of law firms will also benefit lawyers to the extent that it will improve their tax arrangements. Writing in the *Australian Financial Review* on 3 September, journalist Chris Merritt pointed out that the profits of law firms will grow substantially with the shift to a corporate tax regime. Given that the partners of major law firms can earn between \$400,000 and \$800,000 per year, profits distributed at the company rate of tax will be considerably higher than individual earnings taxed at the top personal rate.

My objections to the bill, however, are not about money but about the conflict of interest involved in lawyers meeting corporate objectives as opposed to fulfilling the duty they owe to the court and to their clients.

It is well known that lawyers have a fiduciary duty to the courts. Dr Vere Drakeford, Director of the New South Wales Legal Reform Group, argues that lawyers are officers of the court charged with an oath and duty to uphold the law and abide by a set of ethical rules. In effect, she says that lawyers are gatekeepers of the justice system. Ms Lee Rhiannon mentioned that.

On the other hand, directors of companies owe their first duty to shareholders. How can a solicitor who is also a director of an incorporated law practice serve two masters? I have heard it argued that lawyers can serve two masters. A director of a solicitor corporation must follow ethical rules, so runs the argument, in much the same way as a director of BHP, for example, has a duty to protect the environment. Of course, anyone who knows anything about BHP's Ok Tedi mine in New Guinea knows that this argument is fatally flawed. There is always an overriding duty—in fact, the Corporations Law demands it—to the corporation. This is the point that Murray Gleeson made when he objected to this legislation. The lawyers' overriding duty under the Corporations Law will replace their duty to the client and to the court.

What is not so well-known in New South Wales, or in Australia for that matter, is that this duty is owed to the client as well as to the court. Gleeson was particularly concerned about the court, but I suggest to honourable members that the primacy of the client's interest is the reason this legislation has failed in Canada, the United States of America and Great Britain. This legislation has been introduced and rejected in each of those countries.

**The Hon. M. R. Egan:** Rejected by whom?

**The Hon. P. J. BREEN:** It has been rejected by the legislators in each of the countries of Canada, the United States and Great Britain.

**The Hon. M. R. Egan:** It was not actually tested, as you are implying. It is not as though it was put into practice and failed.

**The Hon. P. J. BREEN:** It was introduced as legislation, debated and rejected. I suggest the reason is that each of those countries has a Bill of Rights, and the primacy of the citizens' rights holds a pre-eminent position in the legal systems of those countries.

**The Hon. M. R. Egan:** In other words, those countries are run by the lawyers and the judges instead by their elected parliaments? That is what a Bill of Rights means.

**The Hon. P. J. BREEN:** No, that is not what a Bill of Rights means. Hopefully, the Treasurer will learn about that as time progresses. A Bill of Rights is about creating a benchmark and a system of justice which enables people to have some basis on which they can make a claim and to have recognised that they have fundamental rights that ought not be overturned by judges or by the legislature.

**Reverend the Hon. F. J. Nile:** It works the other way in Canada.

**The Hon. P. J. BREEN:** I will not argue with Reverend the Hon. F. J. Nile about that. I know he is talking about the right to legal equality in the Canadian Bill of Rights, which has caused a huge amount of difficulty and litigation. There is no reason why the right to legal equality need be in a New South Wales or Australian Bill of Rights. I read in the *Sydney Morning Herald* that it is healthy to whinge. There is plenty to whinge about in this bill and in a legal system that fails to recognise the fundamental rights of its citizens. I am not talking about a Bill of Rights at this stage. I am talking about the right of access to justice. That is the right that this bill contravenes. On the occasion in Sydney of the fiftieth anniversary of the signing of the Universal Declaration of Human Rights, the former Chief Judge of the High Court, Sir Anthony Mason, said:

Access to the courts for the vindication of legal rights is a human right recognised by international instruments and it is a central pillar of the rule of law.

Once again this Parliament is about to pass a law that breaches internationally recognised principles of justice and fairness and ignores the rule of law. It will do so without scrutiny and accountability, and the principles involved will not get one line of space in the print media and not one sound bite on the radio or television airwaves. We live in a legal vacuum in this State as far as basic principles are concerned, and it is only in such a vacuum that a vacuous bill like this could be debated and passed. Last night I heard the Hon. J. Hatzistergos, the Attorney General-in-waiting, speak in this House about plans by the Commonwealth Government to wind back its involvement in the United Nations committee system. He said:

If Australia is to continue to make a difference to oppressed peoples elsewhere in the world, it is essential also that we show an honourable commitment to human rights through the very treaties which we helped to draft.

Needless to say, I support those remarks and I compliment the honourable member for making them in this House. It should also be repeated, however, that the right of access to justice is a basic human right protected by international law. This bill for the incorporation of solicitors' practices flies in the face of that right. If the Hon. J. Hatzistergos is to be consistent in his stand on human rights he ought to be condemning the bill. The bill directs the State's lawyers to focus their attention not on the interests of their clients but on corporate objectives. The bill also says that their duty as lawyers to the courts is subsumed by their duty as directors under the Corporations Law. This shift in focus by lawyers away from the courts and their clients to principles of corporate management and the aspirations of shareholders further undermines the credibility of the legal system.

A persistent failure to recognise basic principles of justice and fairness means that the courts and parliaments are constantly making laws that make us an international laughing stock. As this bill clearly demonstrates, parliaments in Australia increasingly do the bidding of corporate interests who dole out rights in much the same way that they pay dividends. The important question for the future of legal rights in New South Wales may be whether our rights are franked or unfranked. Regrettably, the underlying message in this bill is that lawyers' corporate interests are more important than the primacy of the rights of their clients. Our failure to recognise basic rights and freedoms, not just in a Bill of Rights, is now recognised around the world as a feature of our culture and heritage. John Howard's plans to wind back our involvement with the United Nations committee system is consistent with the attitude of the Australian people to human rights. We get the governments we elect.

**The Hon. M. R. Egan:** Of course we get the governments we elect.

**The Hon. P. J. BREEN:** What I should have said is that we get the governments we deserve, and I thank the Treasurer for pointing that out to me. In fact, our attitude to human rights is broadcast for the world to hear in the video that is played repeatedly in the foyer of this House. I have no doubt that the Treasurer—

**The Hon. M. R. Egan:** I haven't seen it.

**The Hon. P. J. BREEN:** The Treasurer may not be aware of it, but the voice-over on the video tells us ad nauseam that this Parliament gives the people of New South Wales certain rights and freedoms. It does no such thing, of course. Nothing could be further from the truth. That is the language of tin-pot regimes in Third World countries that fail to understand the inalienable rights of its citizens. What the voice-over should say, for the benefit of the Treasurer, is that the Parliament recognises and enhances the rights and freedoms we enjoy by virtue of our humanity. The Parliament gives nothing. It simply recognises and enhances basic rights by virtue of our humanity. Parliaments do not give people rights. In fact, to the contrary—

**The Hon. R. S. L. Jones:** It takes them away.

**The Hon. P. J. BREEN:** In Australia it is more likely that Parliament takes them away, that we reduce or extinguish them, as the Hon. R. S. L. Jones points out. In reality the bill mirrors the attitude displayed by the Government in its parliamentary video. The Legal Profession Amendment Act—

**The Hon. M. R. Egan:** It's not the Government's parliamentary video!

**The Hon. P. J. BREEN:** It is being played under the statue of Neville Wran, so I assume that it belongs to the Government. If it looks like the Government's video and it sounds like the Government's video, it probably is the Government's video. Instead of lawyers being the gatekeepers of the justice system, under this bill they are simply agents of the corporate world. A good analogy at the moment is that it is a bit like putting Kevan Gosper and Phil Coles in charge of the Olympic torch relay and trying to get a run in Olympia or on Bondi Beach. It would be impossible!

Once lawyers have control of the corporations law, as they will under the bill, getting a run in court will depend on corporate values. It will not depend on the value of the court system, or the value of individual rights. I read in the *Australian Financial Review* of 18 August that Graeme Samuel, the President of the National Competition Council, supports the bill. He urged the Government to let the market forces take over on the basis that regulation of the legal profession is anachronistic. I quote from the article, in which Mr Samuel said:

I draw the parallel to shop hours. They took many years in many States to be deregulated. It is also a bit like dairy deregulation.

I take it that Mr Samuels regards 24 hour shopping as a good thing—or 24-hour milking for that matter.

**The Hon. M. R. Egan:** I've got to tell you, I think 24-hour shopping is a good thing. It is the only time I get to do my shopping, when everybody else is asleep.

**The Hon. P. J. BREEN:** I have never been shopping at three o'clock in the morning, so I do not know if it is a good thing or not. Certainly, if I were a cow I would be concerned about being milked 24 hours a day. When we voted on the dairy deregulation in this House I think every member of the crossbench sat on one side of the House and the Government and the official Opposition sat on the other side. It was a landslide victory for corporate and business interests. I suspect that much the same will happen with the Legal Profession Amendment (Incorporated Legal Practices) Bill. The Opposition spokesperson on legal affairs, Mr Hartcher, is reported in an article by Chris Merritt in the *Australian Financial Review* of 11 August as receiving an "overwhelmingly positive" response from the legal profession and the business community about the legislation.

The same article reports the Law Society of New South Wales as the bill's main backer. The Special Minister of State was concerned about that, but he obviously does not realise that the bill was drafted and is promoted by the Law Society. It is the Law Society's bill to further the interests of the legal profession, particularly as constituted by large practices. On 23 August I received a fax on the bill from the Law Society. It is addressed to each of the crossbenchers and says, in one line:

The Society supports the Incorporation Bill as a significant reform to the regulation of the legal profession.

That is all it said. Then:

If you require further information, please do not hesitate to contact Shaun Morgan on 99260250.

**The Hon. M. R. Egan:** Did you give him a ring?

**The Hon. Dr P. Wong:** He did, prior to the Hon. Helen Sham-Ho's call.

**The Hon. P. J. BREEN:** I thank the Hon. Dr P. Wong for that. The Hon. Helen Sham-Ho did give him a ring. He does not talk to me. I see him as he passes my office. He runs the other way because he does not like my attitude to the Law Society's bills and its lobbying. One would think that the Law Society would want to counter some of the arguments against the bill from the Chief Justice, Steve Mark, and Attorney-General Darryl Williams, but it offered just one line. One might even think that the Law Society would want to deal with the criticism of the New South Wales Bar Association that there is no public benefit in allowing companies to offer legal services to the public. This is one of the problems at the heart of the matter: What public benefit is to be found in a bill that puts a yawning chasm between the interests of law consumers and their legal representatives?

There is no public benefit, and that is why the Law Society, the main backer of the bill, supports the bill with a glib one-line statement. There is nothing else the Law Society can say. There is nothing to be said in support of the bill that will stand any form of scrutiny so far as law consumers are concerned. If there were, the Law Society would be the first to tell us about it, but it has said nothing. As honourable members would know, it is generally recognised in the community that the Law Society has two hats, one labelled "lawyers trade union" and the other labelled "law consumers".

It may be a malapropism, but the Law Society falls somewhere between the two hats. The belief that the Law Society serves the interests of law consumers, even incidentally, is for those who take comfort in graven images and false prophets. If the Law Society said anything about this bill it would immediately be obvious that the society does the bidding of lawyers, not law consumers. It is for that reason that a glib one-line statement is the extent of the information honourable members have received. In the absence of any kind of justification for the bill from its main backer, I urge the House to reject it.

Earlier the Hon. Helen Sham-Ho said to me, following her contribution to the second reading debate, that it would be a good idea to suggest to the Minister that we pass the legislation and then lobby the Government not to proclaim it. In view of her record in that regard I think it is a very good suggestion. Even though the bill might be passed today, I will follow in the footsteps of the Hon. Helen Sham-Ho and try to ensure that it is not proclaimed, because it is a bad bill. It is groundbreaking law around the world, but why should we go down that track when it is so obviously designed not for the benefit of law consumers but for the benefit of lawyers, particularly those in large firms?

**The Hon. M. I. JONES** [3.38 p.m.]: The Hon. P. J. Breen has given me a hard act to follow. He is obviously more than comfortable with the subject. I have no objection to solicitors enjoying the benefits that

bona fide employees enjoy, such as superannuation, workers compensation and so on. But I do have a problem with the conflict of interest and the potential lack of protection offered to the public of New South Wales. If a solicitor is sued, the only guarantee for the plaintiff is his professional indemnity insurance. For the benefit of Ms Lee Rhiannon, I have 31 years experience in the insurance industry. When you make a claim for professional indemnity insurance, you have to prove the case to the professional indemnity insurer. It is not simply a question of lodging a claim, as with other forms of insurance. It is quite a process to make a professional indemnity insurance claim. If anything illegal has been done, or the law has been broken in any way, professional indemnity insurers will reject the claim. The process is quite arduous.

**The Hon. Dr A. Chesterfield-Evans:** Which is pretty tough on the consumer.

**The Hon. M. I. JONES:** Yes, it is tough on the consumer.

**The Hon. M. R. Egan:** But it is insurance to indemnify the provider of the service. Don't you understand that?

**The Hon. M. I. JONES:** The Treasurer is quite right. The secondary backstop to protect the public is the Fidelity Fund. For once I find myself agreeing with the New South Wales Legal Reform Group, which stated:

The Fidelity Fund will not protect legal consumers against dishonest default because on March 18, 1999, the Law Society Council resolved that "the maximum amount that may be paid from the Fidelity Fund for claims of dishonest default is \$1000".

Therefore, if the solicitor in question acts dishonestly and shoots off to South America with the contents of a trust account, the most compensation that can be paid is \$1,000. That is not protection for the public. If this bill is passed, the public will, in that circumstance, simply be left to sue a \$2 shelf company. That is not protection at all! Previous speakers have canvassed this aspect, but I add that it is unlikely that a senior solicitor in a large company would not also be a director of the company. He would not leave to others the direction of his company, which is a very valuable asset. He would be a director. Under Corporations Law the first and primary responsibility is to your shareholders. A client seeking advice, guidance and nurturing in possibly precarious circumstances goes to a solicitor, whose primary responsibility is not to the client but to the shareholders.

**The Hon. J. J. Della Bosca:** No, it's not.

**The Hon. M. I. JONES:** Yes, it is.

**The Hon. J. J. Della Bosca:** No, it's not.

**The Hon. M. I. JONES:** Yes, it is! Under Corporations Law the director's responsibility is primarily to the shareholders.

**The Hon. J. J. Della Bosca:** If he's a director, but not if he's an employed solicitor.

**The Hon. M. I. JONES:** I just said it would be highly likely that he would be a director of the company. Therefore, the current position of the solicitor's duties being to the client is compromised—another reason why I believe this is a dodgy bill. As the Hon. P. J. Breen said, in other western countries professionals such as solicitors cannot hide behind companies of limited liability. Therefore, why should Australia take this groundbreaking step? I do not mind legislation being introduced so that solicitors can enjoy the benefits offered to other employees such as superannuation and the taxation deductibility of superannuation contributions in an endeavour to conform with the rights of other individuals and/or employers, to also enjoy the benefits of workers compensation and to be considered under the Tax Act as employees rather than as sole traders.

They are quite reasonable things, but to hide behind companies of limited liability, as this bill proposes, is to my way of thinking not fair on the public. I am also absolutely astounded that a Labor Government would introduce such a bill to put at risk the people it generally purports to protect in favour of a group that I am sure people would agree are somewhat privileged in our society. I cannot support the bill. This is a bad bill.

**The Hon. Dr A. CHESTERFIELD-EVANS** [3.44 p.m.]: The Government and the Law Society favour this bill. A group called the New South Wales Legal Reform Group, which is not the same group as the Hon. P. J. Breen's Reform the Legal System group, although I understand they have common members—

**The Hon. M. R. Egan:** What are they called? The New South Wales what?

**The Hon. Dr A. CHESTERFIELD-EVANS:** The New South Wales Legal Reform Group.

**Reverend the Hon. F. J. Nile:** Which is not a branch of the Law Reform Party.

**The Hon. Dr A. CHESTERFIELD-EVANS:** It is not a branch of Reform the Legal System.

**The Hon. M. R. Egan:** Are they anything other than a letterhead?

**The Hon. Dr A. CHESTERFIELD-EVANS:** I am not familiar with the company structure of the New South Wales Legal Reform Group.

**The Hon. M. R. Egan:** They haven't even got a letterhead.

**The Hon. Dr A. CHESTERFIELD-EVANS:** They have a letterhead.

**The Hon. M. R. Egan:** It's not even a letterhead!

**The Hon. Dr A. CHESTERFIELD-EVANS:** I can give you a letterhead from them.

**The Hon. M. R. Egan:** Are they anyone?

**The Hon. Dr A. CHESTERFIELD-EVANS:** Is anyone ever anyone?

**The Hon. M. R. Egan:** Well, you have to have some good credentials. Is it a group or a person?

**The Hon. Dr A. CHESTERFIELD-EVANS:** I am amazed at the outbreak of existential thought in this Chamber. It certainly leaves me flabbergasted that we are suddenly coming to grips with such fundamental issues in the middle of my modest little speech. Some of the speakers in this debate have said that under the bill the directors of incorporated law firms would owe a fiduciary duty to the shareholders of the company. The only problem with this argument is that shareholders in these firms would probably be lawyers who would also have been partners before their firms were incorporated. It is fiction to suggest that lawyers in a partnership have allegiance to their clients over their partners. We live in a real world and making money out of a legal practice is the main purpose of the exercise. If you want a lawyer who is not in it for the money, go to the Public Defender.

Most people working in the law do so as a professional to earn a living from it. Lawyers working in private practice want to make money. There is nothing wrong with this. That does not mean they are not doing the best for their client. Indeed, it could be argued that the better they do for their client, the better the reputation of the firm, the more work they will get and the more money they will make. Certainly business names, as can be witnessed in large accounting firms, add a huge amount of cost and, presumably, value to the work done. Changing the business structure from a partnership to an incorporated entity will not affect services to clients, standards of work or public confidence in the courts, as suggested by the New South Wales Legal Reform Group.

With the passing of this legislation, lawyers will still have the same legal, ethical and professional obligations as they have at present, whether they are in a company structure, partnership or sole practice. In addition, the Law Society Council and the Legal Services Commission will also have the power to review the compliance of an incorporated legal practice with respect to the proper provision of legal services. It is a fact that ethics need attention in many professions, and the conflict of business and ethics is a conflict that I believe is poorly addressed in our society. The adversarial system in law may have its disadvantages in that it does not get to the root of the problem. When, as frequently happens, laws are passed that limit solicitors costs—I instance the workers compensation legislation—the necessary work cannot be done to achieve justice. Justice faces many obstructions and many external factors make it expensive or difficult to take an ethical stand by way of litigation.

The enforcement of ethical standards in the face of these distractions or counter-priorities is a very difficult problem that this Parliament grapples with. I believe it should grapple with it more thoroughly and more often than it does. But solving traffic problems would not necessarily be achieved by putting people back into horse and cart travel, just as preventing the legal profession from having the business structures available to the rest of the country is not the answer to this problem. The Hon. M. I. Jones described the position of someone suing a \$2 company if his legal practitioner did a bad job by him. He said that if the client's legal practitioner behaved unethically the best he would get is a payout of \$1,000 from the fidelity fund.

Someone whose trust account had been gambled away and had lost thousands of dollars would find such an award very cold comfort. In many of the professional indemnity insurance areas the payout is entirely at the discretion of the insurance company if the practitioner is found guilty of wrongdoing. If he has sent himself broke as well as the client it is extremely difficult in the present situation for the client to get compensation, just as it would be if a company structure were involved. So the problem is changed slightly by incorporation but it would not be created by this legislation. The problem exists within many professions and has for a long time. Those who are highly critical of the bill might look at addressing that problem. We support the bill in the sense that we think that the legal profession should be able to be incorporated and that the issues of ethical conflict that have been raised, validly, need to be addressed not only in the context of this bill but in the far wider context. The efforts of those who oppose the bill should be put into that endeavour, as should the efforts of the Government, which wants us to support the bill.

**The Hon. Dr P. WONG** [3.52 p.m.]: I strongly oppose the Legal Profession Amendment (Incorporated Legal Practices) Bill. I think it is a very bad bill. It will only benefit lawyers, and consumers will ultimately suffer from the passing of this bill. Ultimately, the bill will damage the integrity of our legal system. As mentioned by many honourable members, many countries have rejected such a notion, including Canada, the United Kingdom and the United States of America. Many eminent leaders of the legal profession have voiced their grave concern on this matter. I therefore urge the Government to consider this issue seriously in order to protect the rights of consumers and the justice system of this State.

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.53 p.m.], in reply: The weirdest argument I heard in the debate was that from Ms Lee Rhiannon, who used the ultimate argument of a true conservative: that this is a measure that no other government has implemented before. We are not a conservative government. She might want us to be, but we are a reforming, trailblazing, can-do government. That is why we have such a huge majority and such enormous support. There was also a lot of nonsense about lack of consultation. I think that Ms Lee Rhiannon called for a pause in proceedings before the bill was voted on. The truth of the matter is that the bill was released as an exposure draft for public consultation in April this year. It lay on the table during the last parliamentary recess for a period of further comment. It is interesting that not a single submission was received from any member of this House during that time. Then, all of a sudden, someone with a letterhead—

**The Hon. J. J. Della Bosca**: Who lives at—

**The Hon. M. R. EGAN**: I do not think we should give people's addresses. I do not think Hansard heard the Minister give anyone's address.

**The Hon. J. J. Della Bosca**: It is the organisation's address.

**The Hon. M. R. EGAN**: It is the organisation's address, is it? Guess what? The New South Wales Legal Reform Group is affiliated with the Queensland Legal Reform Group. I wonder who its members are. That almost immediately suggests to me that it is a nonsense organisation. The silliest argument other than those used by Ms Lee Rhiannon was that the bill somehow takes away from the duties of solicitors to the court and to their clients. Nothing could be further from the truth. I refer to schedule 1, new section 47H, which reads:

**Solicitors' professional obligations and privileges**

- (1) A solicitor who provides legal services in the capacity of an officer or employee of an incorporated legal practice is not excused from compliance with the professional obligations of a solicitor and does not lose the professional privileges of a solicitor.
- (2) For the purpose only of the application of those obligations and privileges, the persons provided with legal services by an incorporated legal practice are taken to be the clients of the solicitors engaged in providing those services.
- (3) To avoid doubt, the law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because the solicitor is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by the solicitors engaged by the practice.
- (5) In this section:
 

*professional obligations* includes:

  - (a) duties to the court, and
  - (b) obligations in connection with conflicts of interest, and
  - (c) duties of disclosure to clients (including with respect to matters relating to costs under Part 11), and
  - (d) ethical rules required to be observed by a solicitor.

I think that that is really game, set and match. I have all sorts of notes in relation to all sorts of other issues that I do not think I will waste the time of the House—

**The Hon. Dr A. Chesterfield-Evans:** Are you going to trivialise it like everything else?

**The Hon. M. R. EGAN:** No, I have not trivialised it. I have dealt with the major objection that some of the crossbenchers seem to have to the bill.

**The Hon. R. S. L. Jones:** Will you answer my questions?

**The Hon. M. R. EGAN:** Okay. I will deal with the questions of the Hon. R. S. L. Jones. One of the points he raised was that there was a lack of consultation. That of course is complete and utter rubbish. The bill was introduced in April.

**The Hon. D. J. Gay:** How would you know?

**The Hon. M. R. EGAN:** How would I know what?

**The Hon. D. J. Gay:** Whether there had been consultations.

**The Hon. M. R. EGAN:** Because I have been reading about it in the popular press for the last five months. I have been reading articles about meetings the attorneys have had with this one and that one, and the views expressed by this one or that one. I have been reading the *Australian Financial Review*, which is almost as bad as the *Sydney Morning Herald*. The suggestion of a lack of consultation is absolute rubbish.

**The Hon. R. S. L. Jones:** I did not bring that up. That was not my question.

**The Hon. M. R. EGAN:** I think you did. I will deal with the points you raised in sequence. The duties of solicitors under the Legal Profession Act are in no way supplanted by the amendments. The bill expressly supports the professional duties of solicitors over any duty they might have as directors. This includes first and foremost their duty to the court but also their duties to clients and their duties to avoid conflicts of interest. If a solicitor director breaches his or her duties as a director he or she can still be investigated by the Australian Securities and Investments Commission. The amendments make the duties of the solicitor under the Legal Profession Act paramount. But it is difficult to see how duties under the Legal Profession Act could prevent the investigation of an offence under the Corporations Law. Indeed, in many cases such an offence would also be misconduct as a solicitor. Under section 127B client legal privilege is not expressly protected by the Legal Profession Act, and I can assure the honourable gentleman that if judicial decisions show that the present position is in some way affected by the amendments the Government will review the legislation at an early date.

**The Hon. P. J. Breen:** In other words, the Corporations Law applies—that is what that said. The overriding application is the Corporations Law.

**The Hon. M. R. EGAN:** I understand that there is also a provision in the bill that if there is a conflict between the Corporations Law and this legislation, this legislation prevails. Let there be no doubt that if there is an inconsistency, the provisions of this legislation prevail. In relation to the concerns of the Hon. R. S. L. Jones about recent judicial criticism of the Act, I am told that these decisions refer only to part 10 of the Act. The Government responded promptly to the decisions by referring the complaints and disciplinary provisions of the Act to the Law Reform Commission. That happened in March this year and I understand an issues paper will be published by the Law Reform Commission in the next few weeks and that it will report early next year. I thank honourable members for their contributions to the bill. It is a great pity that there was an unholy alliance of assorted members of the crossbench but, after proper consideration, the views of Her Majesty's Government and Her Majesty's loyal Opposition will prevail.

**Question—That this bill be now read a second time—put.**

**The House divided.**

**Ayes, 28**

Ms Burnswoods	Mr Harwin	Mr Ryan
Dr Chesterfield-Evans	Mr Hatzistergos	Ms Saffin
Mr Colless	Mr Johnson	Mr Samios
Mr Della Bosca	Mr Kelly	Ms Tebbutt
Mr Dyer	Mr Lynn	Mr Tingle
Ms Fazio	Mr Manson	Mr Tsang
Mrs Forsythe	Mrs Nile	<i>Tellers,</i>
Mr Gallacher	Revd Nile	Mr Jobling
Miss Gardiner	Mr Obeid	Mr Primrose
Mr Gay	Dr Pezzutti	

**Noes, 9**

Mr Breen	Mr Oldfield	<i>Tellers,</i>
Mr Cohen	Ms Rhiannon	Mr M. I. Jones
Mr Corbett	Ms Sham-Ho	Mr R. S. L. Jones
	Dr Wong	

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

**Pursuant to sessional orders business interrupted.**

### QUESTIONS WITHOUT NOTICE

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#### WORKERS COMPENSATION DRAFT LEGISLATION

**The Hon. M. J. GALLACHER:** My question without notice is to the Minister for Industrial Relations. The Minister's draft workers compensation legislation contains a proposal to provide that filing a Compensation Court claim under the table of disabilities automatically operates as a disentitlement to a common law claim. Does this proposal remove a safeguard that the election system provides by ensuring that injured workers can consider both options before deciding which avenue to pursue? Is this an attempt to reduce the option of common law claims for injured workers?

**The Hon. J. J. Della Bosca:** Point of order: I tabled the draft bill—

**The Hon. M. J. Gallacher:** It is not on the notice paper.

**The Hon. J. J. DELLA BOSCA:** In that case I am happy to answer the question. As a general account there is a degree of accuracy in the matters described by the Leader of the Opposition—without the deliberate bias he put on the form of his question. Injured workers can claim either a statutory lump sum compensation or common law damages. They cannot, however, claim both compensation and damages. Currently workers choose between common law damages or statutory compensation by starting proceedings for damages or by accepting payment or receiving an award for lump sum compensation. This can result in two sets of legal costs if a claim for lump sum compensation is made but withdrawn before a payment is made or before the court makes an award.

To reduce unnecessary legal costs, the amendments in schedule 4 to the bill propose to change the election provisions so that the injured worker must elect to either start proceedings for common law damages or for statutory lump sum compensation. They will not be able to change part-way through the hearing. Those that have already commenced proceedings for lump sum compensation will have 12 months in which to decide whether they instead wish to pursue common law damages. The Government supports the right of seriously

injured workers to pursue common law damages. This reform will not disadvantage injured workers. Competent lawyers are in a position to provide advice to their clients to enable them to make an informed decision about whether to pursue common law damages.

The reforms outlined in schedules 6 and 8 to the bill will make it easier for lawyers to provide that advice. Schedule 6 will require insurers to provide a clear statement as to why liability is disputed. Schedule 8 to the bill provides for the exchange of information, including medical reports used to support a claim, before a conciliation conference is held. Lawyers will therefore be in a better position to properly advise their clients on their prospects of success at common law. It should be recognised that injured workers who elect to seek common law damages and are unsuccessful will not lose their entitlements to weekly benefits or medical expenses. In other words, they will be properly compensated for their injuries. The Leader of the Opposition will have to wait until the debate on the bill for further details.

**The Hon. M. J. GALLACHER:** I ask a supplementary question. Will the Minister guarantee that he will not take action to restrict common law claims?

**The Hon. J. J. DELLA BOSCA:** As I have said before, everything is on the table in the reform program in relation to workers compensation and there are a number of things I am not prepared to guarantee at this time. What I am prepared to say is what I have already said. We all have to get through life without guarantees and the Leader of the Opposition has to understand that. What I will give a guarantee of is that the Government will legislate to make sure that the workers compensation scheme and the WorkCover Authority operate for their fundamental purpose, which is the absolute maximum benefit for injured workers and the absolute optimal system of prevention of occupation health and safety injuries.

#### **FRANK BAXTER JUVENILE JUSTICE CENTRE**

**The Hon. A. B. KELLY:** My question is directed to the Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment. Will the Minister update the House on programs at the Frank Baxter Juvenile Justice Centre that are assisting with the rehabilitation of young offenders?

**The Hon. CARMEL TEBBUTT:** The honourable member's question provides me with an opportunity to once again place on the public record details of some of the excellent work that has been done and notable accomplishments that are being achieved by staff and detainees at the State's largest detention centre for juvenile offenders, the Frank Baxter centre, outside Gosford. It is a fact that too often the reporting of events in New South Wales juvenile justice centres is negative, covering events and controversies which inevitably tend to reflect poorly on those at the centres. I freely acknowledge that such happenings, when they do happen, are newsworthy but I also believe the other side of the coin, the positives, deserve to be brought to public notice. High among the list of positive achievements at the Frank Baxter centre are two programs linking detainees with strong contributions to the local community. I refer to the Surf Lifesaving program and the Duke of Edinburgh Award Scheme.

I have referred previously to some examples of the involvement of detainees at Frank Baxter in the Duke of Edinburgh awards. At present 22 detainees at the centre are enrolled in the Duke of Edinburgh Award Scheme. In the past decade more than 100 detainees at the Frank Baxter centre and at the centre which preceded it, Mt Penang, have achieved medallions under the scheme. I think that is an outstanding record of achievement. To achieve bronze, silver or gold awards they must fulfil the same requirements as other young people in the community who enter the scheme. They must carry out substantial community service. They must acquire a new skill. They must be involved in sport, particularly with the local community. Finally, they must undertake an expedition, camping out in the bush and trekking from point to point. Participants from the Frank Baxter centre are, of course, supervised when outside the centre.

I am happy to report that in the history of a scheme involving detainees from our centres, very few problems have arisen. Under the community service requirement they have been involved in activities such as the Rural Fire Service, helping the National Parks and Wildlife Service, learning Koori culture, working on projects for churches and, of course, surf lifesaving patrols. The advantage is obviously that there is a benefit for the community, but there is also a benefit for the young people who are, after all, in detention because of things that they have done wrong. They learn some responsibility and they learn the benefit of working for the community and to take some responsibility for their past actions.

The achievements of some of our detainees in the latter category, surf lifesaving, is worthy of some amplification. At present seven of them are training for their surf bronze medallion. This involves a weekly

training session with trainee lifesavers from the general community and patrol duties on Saturday mornings. The patrols have been regularly at McMasters Beach and the McMasters Beach Surf Lifesaving Club has been very supportive of the Frank Baxter centre and the involvement of the detainees. Recently the patrols have expanded to include other beaches where they strengthen the local surf patrols. One of the detainees involved, a longer-term detainee, has qualified to be a trainer in some aspects of surf lifesaving. He is, in fact, instructing trainees from the general community. This is the same young man I had the pleasure of congratulating last month when he was presented with the comparatively rare gold Duke of Edinburgh medal.

Other recent notable examples of community work undertaken for the scheme include one detainee who spent a total of 76 hours helping disabled people with swimming, bowling, riding and walking, and another who devoted 126 hours to forestry work in a national park, clearing vegetation and maintaining tracks. Just last week a group of detainees assisted the Mary McKillop monastery at Kincumber by dismantling an old iron roof on a barn. Another group went to the Terrigal Basketball Stadium and helped to construct stands for a major match. These are just some of the very good works being carried out by the young detainees at the Frank Baxter centre. I congratulate them on behalf of the Government. I also pay special tribute to the staff at the centre, the youth workers and teachers who put in a great deal of time, energy and commitment too.

In particular I should mention the dedication of the co-ordinator of both these programs, senior youth worker Graeme Johnston, who throws himself into the task with great enthusiasm and commitment. I would also like to thank the board and staff of the Duke of Edinburgh Award scheme for providing our detainees with these tremendous self-development opportunities. Of course, the Frank Baxter centre is not alone in these achievements. Similar activities are undertaken at other juvenile justice centres in New South Wales in recognition of the important role such activities play both in the rehabilitation of young detainees but also in preparing young detainees for reintegration back into the community once they have completed their control orders. I will be happy to report to the House on a later date on some of the community-based programs at other centres.

#### OLYMPIC GAMES BUDGET

**The Hon. D. J. GAY:** My question is to the Treasurer, and Vice President of the Executive Council. In light of the Treasurer's comments on ABC radio this morning that the total cost of the Olympic Games is around \$3.5 billion, and considering that Olympics Minister Michael Knight's personal champion, Dr David Richmond, stated last week, on the same radio station, that the cost was somewhere between \$7 billion and \$8 billion, will he now inform the House which of those two figures is correct? Would the public be correct in making the assumption that he is trying to muddy the water in an attempt to hide the true cost of the Olympic Games to every man, woman and child in this State?

**The Hon. M. R. EGAN:** I assure the House that I have absolutely no motive for wanting to underestimate the cost of the Olympics, because the higher the cost of the Olympics the more significant has been the Government's feat of paying for them up front. It would have been a more impressive performance if the Olympics had cost \$12 billion, \$20 billion or \$40 billion and we had been able to pay for them up front. Obviously we want to provide these things at the least cost. The gross cost to the New South Wales Government of both the Olympics and the Paralympics is \$2.16 billion from 1991 to the end of 2001-02.

**The Hon. Patricia Forsythe:** How do you know how much the Paralympics will cost when they have not been held?

**The Hon. M. R. EGAN:** Because the amount has been budgeted for. When I say \$2.16 billion, a million here or there, or half a million here or there, is close enough.

**The Hon. J. J. Della Bosca:** You do not say that about other things, though.

**The Hon. M. R. EGAN:** I do actually. You will get to know me better. Although you have known me for 30-odd years, there are gaps in your knowledge. The cost to the Government is \$2.16 billion for both the Olympics and the Paralympics including not only the \$140 million subsidy that we made a couple of months ago to SOCOG but also the construction costs of the venues, the infrastructure and all the costs involved in augmenting the budget of other agencies such as the Police Service, Waterways, Health and Transport to enable them to undertake their increased activities during the Olympics and the lead-up to the Olympics. The figure of around \$3.5 billion includes the private sector cost of the Olympic venues. Honourable members would be aware that the SuperDome and Stadium Australia are fundamentally private sector undertakings with a government commitment. If private sector investment is included, the figure is more than \$3 billion.

**The Hon. D. J. Gay:** Why would David Richmond be saying \$7 to \$8 billion?

**The Hon. M. R. EGAN:** He probably read that in the Fairfax press—the *Australian Financial Review*.

**The Hon. D. J. Gay:** So, Michael Knight's man has to read about it in the *Australian Financial Review*?

**The Hon. M. R. EGAN:** He has probably been reading the *Australian Financial Review*, which has been asserting that figure on and off for sometime. I would like to know where it gets its figures. The only way to get a figure anything like that would be to exclude the contributions from the private sector, from ticket sales, merchandise sales, sponsorship and advertising. Even with all those figures you still would not get to that amount.

**The Hon. D. J. Gay:** I thought David Richmond was supposed to be competent and fiscal.

**The Hon. M. R. EGAN:** He is a very competent man.

**The Hon. D. J. Gay:** Is he numerate?

**The Hon. M. R. EGAN:** That is an interesting question. One of the things I have found with Treasury officials from not only New South Wales but around the Commonwealth and the world is that, whilst they have economic concepts, if they are given a stack of figures to add up they usually have to ask for help.

**The Hon. M. I. Jones:** That is arithmetic!

**The Hon. M. R. EGAN:** Precisely. It is important but it is not their function. I assure the Deputy Leader of the Opposition that David Richmond is an extraordinarily competent man.

**The Hon. D. J. Gay:** But his figure is double yours.

**The Hon. M. R. EGAN:** Well, ask him to explain that.

**The Hon. D. J. Gay:** I am asking you, because everyone says he is competent and they don't say you are competent.

**The Hon. M. R. EGAN:** I just told you that the gross cost of the Games to the New South Wales Government, in other words New South Wales taxpayers, from 1991 to 2001 is \$2.16 billion. Some of the \$140 million that we gave to top up SOCOG's budget a few months ago I expect to get back, but not very much. I cannot remember off the top of my head all the additional items of expenditure that I approved. I know that we supplemented the catering budget for the Olympic Village by about \$11 million, which simply goes to show that the athletes loved our tucker. Originally we estimated that each athlete would eat on average 2.4 meals per day. They ended up eating 2.8 meals per day at the village. I forget the estimate for the cost of each meal, but that also was exceeded. We certainly do not begrudge the athletes their meals. I went to the Olympic Village on the Wednesday before the Games and had dinner in the dining room of the village, which was a huge tent that seated about 4,000 people at one time. I have never seen so much food consumed in my life! The athletes had a tremendous selection of food— everything you could imagine.

**The Hon. H. S. Tsang:** Steak and chips.

**The Hon. M. R. EGAN:** Yes, I am told that steak and chips were especially popular with most of the non-Australian athletes. They loaded up their trays—not just the big burly guys, not just the John Joblings or the John Della Boscas of this world, but also the gymnasts and long-distance runners. I said to one of them, "You are never going to finish that", but five minutes later it was all gone! They went back for seconds. I am glad they liked our tucker. We tried to ensure that they would. So that was all at an additional cost.

I am pleased to advise the House that the \$2.16 billion has been fully paid, at the same time as the Government, since 30 June 1996, has reduced the State's general government sector total net financial liability by \$8.7 billion. It is not only the first time in the history of this State that we have hosted an Olympic Games, it is also the first time in the history of this State that we have reduced the State's net financial liability—and we have done both together. We have reduced the general government net financial liability by \$8.7 billion and we staged the best Olympic Games that the world will ever see. I predict that now.

**The Hon. M. J. Gallacher:** We did, didn't we?

**The Hon. M. R. EGAN:** Yes, we did.

**The Hon. M. J. Gallacher:** You were talking about your Government a moment ago.

**The Hon. M. R. EGAN:** No, I am talking about us—we did it. But it was the New South Wales Government, through the New South Wales taxpayers, who paid for it. In addition to the \$2.16 billion contributed by the New South Wales taxpayers, the Commonwealth Government contributed \$180 million, and I thank it for that. It is a very significant achievement. We paid for the stunningly successful Games and reduced net financial liabilities at the same time.

**Reverend the Hon. F. J. Nile:** Will there be a little surplus at the end?

**The Hon. M. R. EGAN:** As I said, of the \$140 million I think we will get some back. I do not want to be put into the position of predicting how much. Frankly, we will not know how much with certainty until sometime down the track. The Olympic Games were not only the biggest sporting event that the world has ever seen, they were also the most successful. And we go from that to the second-biggest sporting event, the Paralympics. The Sydney Paralympics will be bigger than the 1956 Melbourne Olympics. There are more athletes here for the Sydney Paralympics than were in Melbourne for the 1956 Olympics. I do not know why anyone—as some apparently were—would be surprised at the outstanding success of the Games. I was always very confident, and I predicted in my Budget Speech that they would be a stunning success. Of course, not in my wildest dreams did I ever think that they would be as sensationally successful as they turned out to be.

But we should not have been surprised, because in 1956 Melbourne surprised the world with the friendly Games, which to that time were the best Games the world had ever seen. Melbourne showcased Australia as it then was. Sydney showcased a very modern and contemporary Australia—the Australia of the year 2000. The world saw not only a thriving, diverse, mature, technologically sophisticated economy, it also saw a society that was fundamentally good. It saw a competent, multicultural, efficient and tolerant society of, generally, good and well-mannered people. The Australians showed that. There were 19 million people in Australia, give or take a few, who were determined that these Games would be the best the world has ever seen.

**The Hon. Dr B. P. V. Pezzutti:** Point of order: I realise that the Treasurer missed his opportunity to speak to the motion on the Olympics, but this is not the appropriate time for him to make a speech on the Olympics. This answer has now taken more than 15 minutes. Other members have questions that could be answered.

**The Hon. M. R. EGAN:** To the point of order: I apologise that I was not here on Tuesday. I was doing what the Hon. Dr B. P. V. Pezzutti told me to do: go overseas and promote the interests of New South Wales. If he is going to criticise me for that, I will not do it anymore. I will not leave the House early at night in the future either, because I cannot rely on the Special Minister of State to adjourn the House at 10.30 p.m. The Minister was given his opportunity and he let us all down. I am absolutely staggered! I will not go home early anymore, jetlag or not. I will stay here and adjourn the House at the time it should be adjourned.

**The PRESIDENT:** Order! As I have continually said, it is a tradition in this House that Ministers may answer questions as they see fit, and the Treasurer was certainly answering the question. There have been no rulings from the Chair about the length of Ministers' answers. The Leader of the Government may proceed.

#### **WORKCOVER INSURANCE SCHEME DEFICIT**

**The Hon. P. J. BREEN:** My question without notice is to the Special Minister of State, Minister for Industrial Relations, and Assistant Treasurer. In view of the Minister's statement earlier this week that the workers compensation deficit at 30 June this year was \$1.6 billion, can the Minister explain to the House how the deficit grew so quickly, given that it has increased almost fourfold since 30 June 1996? Can the Minister explain why his Government's legislative reforms since 1996 have failed to address the fundamental problems of WorkCover and whether these so-called reforms were the contributing factor to the deficit blow-out? Is the Minister aware that 25 per cent of WorkCover payouts in the year to 30 June 2000 are attributable to damages at common law and legal costs? If so, can the Minister tell the House why his Government has failed to address the problem since 1996?

**Reverend the Hon. F. J. Nile:** The Minister was not here in 1996.

**The Hon. P. J. BREEN:** His Government was. Does the Minister agree that workers compensation is a walk in the park for many lawyers practising in that jurisdiction? Can the Minister inform the House if there are any comparative studies of the golf handicaps of workers compensation lawyers with, say, lawyers involved in the Glenbrook rail inquiry?

**The Hon. J. J. DELLA BOSCA:** The Hon. P. J. Breen has asked a very wide-ranging question. I lost count of the number of aspects of it. It contained at least five, maybe six discrete questions. I will deal with it as a general question about the workers compensation deficit. To a large extent, the measurement of the deficit is a technical issue. It is a matter that governments and the board of WorkCover, indeed any statutory insurer, leave largely in the hands of professional auditors. In my report to the House the other day, I referred to the assessment of the scheme deficit by Tillinghast, WorkCover's actuaries. I passed on to the Parliament the advice that Tillinghast gave to me and the WorkCover board and put it in the public domain. I am happy to provide all the publicly available material from Tillinghast.

As I mentioned in the House and in the public arena the other day, the second initiative the Government has taken recently is a call for expressions of interest in relation to the deficit. The Government does not have a closed mind about ways in which the deficit can be handled. Currently in the marketplace, both in Australia and internationally, are a series of schemes which are various types of financing arrangements and innovative proposals on ways to manage deficits in insurance schemes. We are prepared to scour the earth to find all the available options that are publicly acceptable to reduce the workers compensation deficit as quickly as possible, but also keeping it within the interests of the fundamental purpose of the scheme.

The Hon. P. J. Breen also asked me about golf handicaps of solicitors who practise in the workers compensation field. I know a great number of workers compensation solicitor practitioners. My experience of them, particularly those who specialise in workers compensation, is that they are very hard-working members of the legal profession. I do not know if any of them play golf. If they do, they would confine their golfing activities to the weekends because they put in a very hard day and apply themselves to their clients. Rather than bashing up the legal profession, we need to look at some of the endemic problems with the dispute resolution system that prevails at the moment. I refuse to be boxed into a conservative view on that.

I expect to have some disagreement with the legal profession over the dispute resolution proposals; not everyone agrees with everything the Government intends to do in that regard. But I am sure that people of all occupations will be so motivated by goodwill toward the welfare of injured workers and the prevention of occupational hazards that there will be general support for the proposals. I do not want to sling off at the solicitors. There was another aspect to the questions asked by the Hon. P. J. Breen, but it now escapes me.

**The Hon. P. J. Breen:** I was concerned about the increase in the deficit since 1996.

**The Hon. J. J. DELLA BOSCA:** As to the technical measurement of the deficit, again I say that I am prepared to make all of the reports available to the Hon. P. J. Breen. I can make available to the honourable member this afternoon if he wants, or certainly tomorrow, all of the actuarial reports that describe the ways in which the deficit has increased. As to the reforms, I have said a number of times in this House and publicly that the reform package that was put in place by the Hon. Jeff Shaw has made contributions to improving the efficiency and effectiveness of the scheme. It seems that reform package has now reached its elastic point and new measures are required.

#### **BLUE MACKEREL RESOURCE SUSTAINABILITY**

**The Hon. JANELLE SAFFIN:** I direct my question without notice to the Minister for Mineral Resources, and Minister for Fisheries, and it is about blue mackerel. The new mackerel industry is creating much-needed jobs in the Eden area. Will the Minister inform the House what the Government is doing to protect the interests of those concerned about the sustainability of this fish resource?

**The Hon. E. M. OBEID:** The important question asked by the Hon. Janelle Saffin will help the people of Eden in their search for much-needed jobs. The Carr Government, as it is known, is committing to protecting our valuable fish resource, while also committing to supporting important regional businesses and creating jobs in rural New South Wales. For some time Eden and the South Coast community have been fighting to retain jobs. Recently the Commonwealth Government contributed funding towards a new blue mackerel industry in Eden. The opening of a new fishery should be approached with caution. Blue mackerel, otherwise known as slimy mackerel, are an important part of the fish food chain.

**The Hon. C. J. S. Lynn:** They are slimy.

**The Hon. M. J. Gallacher:** You'd know all about them, wouldn't you? I've caught another Eddie. That slimy mackerel, it's slippery. Very hard to get a grip on, aren't they? They are very unpalatable.

**The PRESIDENT:** Order! I cannot hear the Minister's answer.

**The Hon. E. M. OBEID:** The Leader of the Opposition might think this is a joke, but they are a very important part of the food chain. They are the bottom of the food chain. The blue mackerel are eaten by species such as tuna, marlin and kingfish. Both the commercial and recreational sector use this fish for bait. During a recent visit to the South Coast I listened to the concerns of local recreational fishers, who are generally worried about harvesting of blue mackerel for export. I have received similar representations from commercial fishers. Blue mackerel are deepwater species found mainly in Commonwealth waters outside our State's three nautical mile zone.

This is a Commonwealth matter because the Federal Government is responsible for licensing commercial operations in these waters. However, I am seriously concerned that the Commonwealth's knowledge about this resource may not be sufficient. More work needs to be done to determine whether it is sustainable. I have already written to the Commonwealth Minister for Agriculture, Fisheries and Forestry to express my concern in this regard. I have sought his reassurance that research will be undertaken. The Carr Government wants to ensure that the necessary assessments are conducted. I have offered the assistance of the New South Wales Government. I am still waiting for a response.

**The Hon. J. F. Ryan:** Absolutely. It should start here, in the parliamentary dining room.

**The Hon. E. M. OBEID:** Why does the Hon. J. F. Ryan not take some things seriously? He would have a chance to get to the front bench if he did. He is not interested in jobs for Eden.

**The Hon. J. F. Ryan:** I am very interested, and I am very interested in slimy mackerel fish.

**The Hon. E. M. OBEID:** It is a very interesting species for Eden. It brings in many thousands of dollars for Eden, but he is not interested. I am still waiting for a response from my colleague in the Federal Parliament. I have established a baitfish working group in New South Wales to consider the management of this important part of the food chain. The group is made up of recreational and commercial fishers, together with New South Wales Fisheries researchers and Commonwealth representatives. I look forward to updating the House on further developments in our management of this resource.

#### WASTE REDUCTION

**The Hon. Dr A. CHESTERFIELD-EVANS:** My question is directed to the Minister for Juvenile Justice, representing the Minister for the Environment. Is the Minister aware of the South Australian Government's recent extension of its container deposit legislation that will apply a 5¢ deposit on fruit juice, flavoured milk and sports drink containers to help reduce litter and increase recycling? Is the Minister aware of recommendations made by the National Youth Roundtable on 11 October for a national 5¢ levy on plastic supermarket bags to encourage shoppers to take their own bags? Has the Minister given any consideration to implementing similar, progressive legislation in New South Wales? Will the Minister agree with the recommendations of the National Youth Roundtable for a 5¢ levy on plastic shopping bags?

**The Hon. CARMEL TEBBUTT:** The record of this Government on waste reduction is significant by any measure. A whole range of priorities has been established, proposals discussed and policies put in place. Container deposit legislation has been the subject of an ongoing debate. The Government's preferred mechanism to date has been to work with industry to determine waste reduction proposals in a range of different areas. However, the Minister has indicated that he is considering container deposit legislation as part of a broader consideration of waste reduction generally.

#### NORTH COAST ELECTIVE SURGERY WAITING LISTS

**The Hon. Dr B. P. V. PEZZUTTI:** My question is directed to the Treasurer. Is he aware that the number of people on the North Coast waiting more than 12 months for elective surgery has grown from 24 to 1,551 since his Government took office, and that it has grown from 202 to 1,551 since the March 1999 State

election? Is he aware that some 7,807 people in New South Wales are waiting for more than 12 months for elective surgery? Is he aware that 20 per cent of such people are from the North Coast? What will he do to ensure that adequate funds are provided to North Coast health services, that is the Northern Rivers Area Health Service and the Mid North Coast Area Health Service, to alleviate the suffering of the 1,511 people waiting for elective surgery on the North Coast?

**The Hon. M. R. EGAN:** I remind the House that health is a \$7 billion plus priority for this Government each and every year. It is the biggest item of expenditure in the State budget every year. Nevertheless, I will refer the honourable member's question to my colleague the Minister for Health and obtain a response for him. I can assure the House that health will remain an expenditure priority for the Government.

### WORKERS COMPENSATION STATISTICS

**The Hon. R. D. DYER:** I ask the Special Minister of State whether he will advise the House of the latest trends in workers compensation statistics?

**The Hon. J. J. DELLA BOSCA:** The WorkCover Authority is about to release its annual statistics bulletin covering the period to 30 June 1999. I am pleased to report that on a number of major fronts the incidence of injuries has improved greatly. The good news for everyone is that the data indicates that some key areas of the scheme have improved. The total number of employment injuries in 1998-99 fell for the fourth successive year. The number of injuries in 1998-99 was 55,492, which is a 12 per cent fall since 1994-95. The incidence of employment injuries has also dropped from 28 per 1,000 workers in 1994-95 to 23 per 1,000 workers in 1998-99. During the same period the number of entries per million hours worked dropped from 16.1 to 12.9.

Although far too many workers continue to die as a result of work-related injuries, the number of fatalities has fallen in the last year: 163 deaths were reported in 1998-99, which is 18 fewer than the previous year. Since the Government took office its commitment to occupational health and safety has paid dividends by saving the lives and health of the workers of New South Wales. Across a wide range of injury types, injury and illness rates have fallen. The number of workplace injuries has fallen, with 766 fewer injuries reported during the period from 1994-1995 to 1998-1999. The number of occupational diseases has fallen by one-third from approximately 14,000 in 1994-95 to 9,000 in 1998-99.

The reported number of cases of mental disorders also declined in 1998-99. Some 1,682 cases were reported, which represents a reduction of 226 cases from the previous year. I am also pleased to note that the injury management and return-to-work rates in the scheme have increased. A national survey of return-to-work rates shows that New South Wales has a return-to-work rate of 81 per cent, compared to the national average of 76 per cent. We are definitely making some ground in improving the scheme. However, we must remember that the 3 per cent of claims that extends beyond one year makes up 75 per cent of the costs in the scheme.

The reform process we have started focuses on helping people to fully recovery from injury. Our priority is for injured workers to return to a full working life as quickly as possible. With a commitment to thoughtful reform, more workers and the scheme as a whole should be better off. Copies of the "The Statistical Bulletin 1998-1999" are available by ringing the WorkCover Information Centre on 131050, or honourable members are welcome to contact my office.

### PRISON SAFETY

**The Hon. I. COHEN:** I direct my question to the Minister for Mineral Resources, representing the Minister for Public Works and Services. Is the Minister aware that the Criminal Justice Coalition pointed out obvious hanging points, such as grilles over doorways, at the Metropolitan Reception and Remand Centre before its opening in 1997? Have steps been taken to eliminate those hanging points? Is the Minister aware that the Victorian Government has been held partially accountable for the death by hanging of a male prisoner in a private prison after warnings of inadequate cell design were ignored?

**The Hon. E. M. OBEID:** No, I am not aware of the details of the honourable member's important question, but I will obtain a detailed answer to it.

### DAIRY INDUSTRY DEREGULATION

**The Hon. J. H. JOBLING:** My question without notice is to the Special Minister of State, representing the Minister for Agriculture. Is it a fact that supermarkets have increased their margins since dairy deregulation and that although the price to consumers has been reduced, that reduction has been borne by

farmers? Is it a fact that farmers are now paid 26¢ to 35¢ a litre for milk compared to 53¢ to 59¢ prior to deregulation? Is it also a fact that production costs for milk currently range between 28¢ and 40¢ a litre? Given these facts, what will this Government now do to protect the jobs of New South Wales dairy farmers?

**The Hon. J. J. DELLA BOSCA:** I thank the honourable member for his detailed and clearly thoughtful question on deregulation. Not long ago the House debated this matter at great length.

**Reverend the Hon. F. J. Nile:** Who voted for the bill?

**The Hon. J. J. DELLA BOSCA:** Reverend the Hon. F. J. Nile makes the point that the Government and the Opposition quite properly, due to political circumstances, were on the same side in the debate.

**The Hon. J. H. Jobling:** And pointed out all these problems to you?

**The Hon. J. J. DELLA BOSCA:** Well, many members from all sides of the House and, indeed, the Government and the Minister, were conscious of what the Hon. J. H. Jobling refers to as problems. As I said, that debate is fully and adequately recorded in *Hansard* and honourable members are welcome to review it. I have not been given a specific update or brief on the likely action that the Minister for Agriculture contemplates with regard to the dairy industry. I will find out from him what he sees as the appropriate way to deal with that question and provide a response to the House and the Hon. J. H. Jobling as soon as possible.

#### CENTRAL COAST COMMUNITY DRUG ACTION STRATEGY

**The Hon. H. S. TSANG:** Can the Special Minister of State inform the House of the progress of the Government's community drug action strategy on the Central Coast?

**The Hon. J. J. DELLA BOSCA:** I am pleased to inform honourable members that on 11 September I launched the first regional plan of action for the Government's drugs and community action strategy for the Central Coast. The plan was developed in consultation with the community and through information provided by the community. It outlines the nature of drug issues and problems in the region and promotes positive realistic action to address the problem. Of the 52 recommendations 11 directly relate to health and legal issues. The remainder are concerned with families, community action, young people and young adults, training and employment, education, and awareness raising.

[*Interruption*]

The Leader of the Opposition is concerned that I am talking about the Central Coast. This particular launch was on the Central Coast, which has a good community drug action team in place. It just so happened to be a fortunate coincidence that this is the first of the community drug action strategies to be released and I was privileged to release it publicly. Quite a lot of the strategies will be unrolled across various regions of the State. If the Leader of the Opposition will allow me, I shall continue. Support has been received from all sectors of the community: State and local government, non-government organisations, businesses, churches and welfare groups, and community-based organisations.

Like the Drug Summit, this process has demonstrated that positive things can be achieved when people are brought together to produce constructive responses to a problem. Under the plan, a diverse range of people and interests will work together. A regional community drug action team, comprising 25 organisations, will oversee the implementation of the plan and support local community drug action teams to be established across the Central Coast. I am advised that six locations have been identified, including Pacific Delmar, northern Wyong, Woy Woy, Gosford and The Entrance. A community drug action team for the Aboriginal community also has been convened.

**The Hon. M. J. Gallacher:** You don't like Wyong, do you?

**The Hon. J. J. DELLA BOSCA:** There is one in northern Wyong. These teams will play an important role in strengthening the Central Coast community by finding practical and achievable ways of addressing local drug issues. I look forward to reporting to the House on the Government's progress in establishing new teams and the work and achievements of local communities over the coming months. The launch was a pleasant day. The Leader of the Opposition was not there.

**The Hon. M. J. Gallacher:** You don't invite me to anything up there.

**The Hon. J. J. DELLA BOSCA:** Were you not invited?

**The Hon. M. J. Gallacher:** You're an elite.

**The Hon. J. J. DELLA BOSCA:** I had an interesting press article about Ms Kerry Jones saying you are run by an elite. I was not sure whom she was identifying as part of the elite! Fay Brennan, Mayor of Wyong, and a number of other senior leaders of the Wyong community were represented at that launch, including the local police area commander and a number of community representatives. In regional terms, the launch represented an appropriate balance.

#### HAZARDOUS CHEMICAL USE IN SCHOOLS

**The Hon. A. G. CORBETT:** My question without notice is addressed to the Special Minister of State, representing the Minister for Education and Training. What action is the New South Wales Department of Education and Training taking to protect children and staff from exposure to chemicals at school, to minimise the use of hazardous chemicals on school grounds, and to warn parents that their children may be exposed to toxic chemicals at school?

**The Hon. J. J. DELLA BOSCA:** The only memory I have of hazardous chemicals when I was at school was the old roneo machines that used some kind of spirit. I do not know whether anybody else remembers, but I distinctly remember as quite a small child in primary school, maybe only six or seven years of age, sniffing the paper. I remember that most of our class used to sniff the paper.

**The Hon. M. J. Gallacher:** Then you graduated, didn't you?

**The Hon. J. J. DELLA BOSCA:** No, I never graduated. I was one of the lucky people that did not graduate to any other form of sniffing abuse! I assume the Hon. A. G. Corbett is not talking about that sort of hazardous chemical, although that practice probably was hazardous. It probably did not do me any good!

**The Hon. M. R. Egan:** It didn't do me any harm!

**The Hon. J. J. DELLA BOSCA:** The Leader of the Government points out that it did not do him any harm. I do not think it did me any harm. I do not know whether the Leader of the Opposition did it! Some members here who are professional teachers probably remember that whole classes did it and it probably has not done them great harm. The question relates to matters over and above my personal knowledge and experience of hazardous chemicals in the classroom, but I am sure the Minister will be able to answer it. I will refer the question to him and obtain a detailed answer for the honourable member.

#### INDIGENOUS FISHING STRATEGY

**The Hon. JENNIFER GARDINER:** My question is to the Minister for Fisheries. Earlier this week in answering a question from his colleague the Hon. A. B. Kelly, the Minister referred to the Government's proposed general recreational fishing fee. The Minister also referred specifically to the Government's indigenous fishing strategy. I note that several years ago the Standing Committee on State Development reported to this House on the Government's tardiness in producing that strategy. Has the development of the strategy been finalised? If so, why have many indigenous fishers not seen the strategy? When will it be published?

**The Hon. E. M. OBEID:** To the best of my knowledge the indigenous strategy is the responsibility of my colleague the Minister for Aboriginal Affairs, Andrew Refshauge. It is within his domain to provide that indigenous strategy. I am not aware whether it has been finalised, but I am more than happy to seek an explanation and an answer from my colleague. The indigenous community plays a very important part in my portfolio. Indigenous people are represented on most of my advisory committees. Within the general recreation fee there is provision for exemptions—

**The Hon. D. J. Gay:** How would Refshauge have responsibility?

**The Hon. E. M. OBEID:** He is the Minister for Aboriginal Affairs. I am more than happy to seek further detail from my colleague.

#### ABERDARE EAST MINE SITE RESTORATION

**The Hon. A. B. MANSON:** My question is to the Minister for Mineral Resources, and Minister for Fisheries. How successful has restoration work been at the Aberdare mine site near Cessnock?

**The Hon. E. M. OBEID:** This question is very important for the community of Cessnock, and this is a very interesting story. The community of Cessnock and year 7, 9 and 11 students from Cessnock High School have participated in the first stage of the rehabilitation of the Aberdare East mine in the Hunter region. The students planted 300 native trees on the mine site, supervised by staff from the Department of Mineral Resources, Singleton office. The tree planting ceremony was the final step in rehabilitating 337 hectares of land affected by mining and salinity. This important community project shows the direct benefit of government funding. The New South Wales Government provided \$185,000 to revegetate the mine site.

The site is now used by a training school that conducts courses for heavy machinery operators. Probably many of the Cessnock high students who worked on the project have fathers, grandfathers and uncles who worked in the Hunter coal mining industry. These students got first-hand experience of their local environment and how the Government is improving the land for a range of uses. Addressing environmental problems caused by mining has been a government priority. Since 1995 the Government has increased funding for the rehabilitation of abandoned and derelict mines from the paltry \$125,000 allocated by the Coalition Government to \$1.65 million in this year's budget.

**The Hon. J. H. Jobling:** And the mining companies have spent a hell of a lot more than that.

**The Hon. E. M. OBEID:** No doubt. I am just comparing what the Coalition Government spent on the rehabilitation of derelict mines—a measly \$125,000. In this year's Carr Labor Government budget there is \$1.65 million for that purpose. This shows our priorities and how important we consider it is to rehabilitate mine sites for the benefit of the community. We are also committed to protecting future mine sites. All new mining ventures are required to meet strict environmental safeguards and provide securities. I look forward to advising this House about further successful work carried out under the derelict mine lands rehabilitation program

#### SALINITY STRATEGY FUNDING

**The Hon. M. I. JONES:** My question is to Special Minister of State, representing the Minister for Agriculture, and Minister for Land and Water Conservation. The Federal Government has recently pledged \$700 million to combat salinity in Australia. At the salinity summit in Dubbo, which I had the honour to attend, there was no commitment by the New South Wales Government to spend any money. The New South Wales salinity strategy brochure similarly does not commit any money. When will the State Government commit any appropriate funding?

**The Hon. J. J. DELLA BOSCA:** The simple answer is that we have, in the order of \$52 million.

**The Hon. M. R. Egan:** In addition to the \$35 million that we spend each year.

**The Hon. J. J. DELLA BOSCA:** The \$52 million has been committed over four years and there is another \$35 million each year. The fundamental premise of the honourable member's question is wrong: money is committed to the anti-salinity strategy. The Minister for Agriculture, and Minister for Land and Water Conservation responded to the Federal Government's announcement in a positive way. We are a positive Government and we are prepared to work with—

**The Hon. M. R. Egan:** The Commonwealth Government's proposals do not include any market-based solutions.

**The Hon. J. J. DELLA BOSCA:** No, they do not.

**The Hon. M. R. Egan:** They can throw money at the problem until they run out of money, but if the strategy does not embrace market-based solutions it is a waste of money.

**The Hon. J. J. DELLA BOSCA:** It appears that we have concerns about the Commonwealth Government's approach. I think that we can look forward to the Minister for Agriculture, and Minister for Land and Water Conservation making a substantial and considered response to the Commonwealth Government's package in the public arena very shortly.

**The Hon. M. I. JONES:** I ask a supplementary question. I am aware of that level of expenditure but I was really referring to spending real money on this problem. This is a \$3 billion to \$4 billion problem. I thought that the salinity summit plus the grandiose salinity brochure would really address this problem, rather than

possibly funding strategies or working parties to look at the problem. This is a real problem. Is it going to be addressed adequately or are we going to play with it and try to make some mileage out of pretending to play with it?

**The Hon. J. J. DELLA BOSCA:** We are funding strategies to deal with the problem, not to look at the problem. We have concluded looking at the problem. In answer to the honourable member's question about when we are going to put "real" money into dealing with the problem, we do not put in counterfeit money: the money that we put in is real money. There will continue to be support. Do not forget that State government agencies carry almost all the burden of managing the problem. As the Treasurer has reminded me and the House, while the fundamental premise on which the Commonwealth package is structured appears to throw a very large amount of money at the problem, it does not deal with the underlying political and market-based difficulties with salinity, water use and all the related difficulties. Those hard yards will have to be done by the State governments, especially the New South Wales Government.

#### HIGHER SCHOOL CERTIFICATE EXAMINATION PAPER SECURITY

**The Hon. PATRICIA FORSYTHE:** My question is to the Special Minister of State, representing the Minister for Education and Training. In view of the commencement of the Higher School Certificate next week—I am sure all members of the House would want to wish students the best of luck—can the Government give an assurance that new safeguards are in place to resolve the security problem that occurred last year with the loss of some completed Higher School Certificate papers in transit to marking centres.

**The Hon. J. J. DELLA BOSCA:** I will refer the honourable member's question to the Minister for Education and Training. It obviously deals with specific operational matters within the education department, which I am confident the Minister will have absolutely under control.

#### POST-OLYMPICS BUSINESS STRATEGY

**The Hon. J. HATZISTERGOS:** My question is directed to the Treasurer, and Minister for State Development. Will the Minister give the House details on how the Government will capitalise on the success of the Olympics?

**The Hon. M. R. EGAN:** Honourable members will see that I am even wearing my Olympic pin for the occasion. At a press conference earlier today I was taken to task by some journalists for wearing it upside down, but I told them that it was not upside down the way I was looking at it. However, I turned it around so they could see it the right way up. I have been wearing the Olympic pin because I am hoping that someone will offer me a Paralympic pin, but no-one has. I became a pin collector during the Games. I never thought I would be a pin collector but I have the best selection of Olympic pins of any member in this House.

**The Hon. H. S. Tsang:** I will lend you mine.

**The Hon. M. R. EGAN:** Thank you very much. Isn't that beautiful? I actually thought it was a pretty nerdy and American thing to do but I must admit I became quite taken with it. I now have my assortment of pins stuck to my Olympic cap—and I never thought I would wear a baseball-type cap.

**The Hon. C. J. S. Lynn:** Which way did you wear the baseball cap?

**The Hon. M. R. EGAN:** On a few occasions I did wear it backwards, yes. I found it most uncomfortable and I do not know why the young people wear them backwards. I forget why I did it. I think it was making my head itchy and I thought I would try it the other way. The Hon. J. Hatzistergos has asked a serious question and I thank him for it. I am pleased to advise the House that the Government will undertake a very aggressive investment, jobs and business drive over the next 12 months capitalising on the success of the Olympic Games. Over the next six months to 12 months we have a window of opportunity to take advantage of the limelight and promote New South Wales and Australia to the world. In other words, we have an opportunity to reinforce the message the Games sent to the world.

Through the State Government's Olympics business program, we make contact with more than 10,000 senior business leaders and decision makers from around the world. The Department of State and Regional Development hosted more than 100 events, functions, dinners, briefings or seminars during the two weeks of the Olympics. That was a huge effort by the officers of the department and they deserve tremendous credit, not only

for the size of the program but also for their professionalism. They worked extraordinarily hard and very professionally. We now have to go out into the international market and follow up on these opportunities. We should not rest on our laurels. We must argue our case for investment and Australian products again and again. Over the next year the Government plans an intensive series of trade and market visits. As honourable members are aware, I have just come back from Dubai, which was the first of the visits.

**The Hon. Dr B. P. V. Pezzutti:** I thought you said you were going at the end.

**The Hon. M. R. EGAN:** No, I said after the criticism I got from you today and after you advising me time and again—

**The Hon. Dr B. P. V. Pezzutti:** I did not. I said you should go again.

**The Hon. M. R. EGAN:** Did you? Well, you criticised me for not being here on Tuesday.

**The Hon. Dr B. P. V. Pezzutti:** It was said that you have met a lot of Treasurers around the world and I said you have not met many because you have not been around the world.

**The Hon. M. R. EGAN:** That is true.

**The Hon. Dr B. P. V. Pezzutti:** You have been to New York and back.

**The Hon. M. R. EGAN:** I have been to Japan.

**The Hon. Dr B. P. V. Pezzutti:** You have not been around the world, though.

**The Hon. M. R. EGAN:** I have been to the United Kingdom, Germany, Switzerland, the Middle East.

**The Hon. A. B. Kelly:** Ireland?

**The Hon. M. R. EGAN:** No, I haven't got to Ireland but I would like to go. You should come with me. There are many places I would like to go.

**The Hon. R. S. L. Jones:** Taiwan?

**The Hon. M. R. EGAN:** I have not been to Taiwan, no.

**The Hon. R. S. L. Jones:** You must go.

**The Hon. M. R. EGAN:** Will you come?

**The Hon. R. S. L. Jones:** Yes.

**The Hon. M. R. EGAN:** Good.

**The Hon. J. F. Ryan:** But he still calls Australia home.

**The Hon. M. R. EGAN:** Too right I do.

**The Hon. Dr B. P. V. Pezzutti:** Aussie! Aussie! Aussie!

**The Hon. M. R. EGAN:** Oi! Oi! Oi! I even like the song. In fact, I even liked the songs in the closing ceremony. I had never heard of them and I was amazed that people my age—

**The Hon. D. J. Gay:** *Waltzing Matilda*?

**The Hon. M. R. EGAN:** That one was fantastic. I know a lot of songs in the middle and I was amazed how some people my age knew the words to some of those songs. I certainly did not, but when they got to *Waltzing Matilda*, we all knew the words and I do not think anyone who was at the closing ceremony will forget singing *Waltzing Matilda* along with Slim Dusty. It was a great occasion.

**The Hon. M. J. Gallacher:** Do you think any beds are burning with Peter Garrett?

**The Hon. M. R. EGAN:** I wouldn't know. I don't listen to Peter Garrett. I could stand him neither politically nor as a singer. He is not my cup of tea. The words were news to me but I did enjoy them. As I said, we cannot rest on our laurels and we have an extensive series of trade and market visits planned. As well as my trip to Dubai, the Premier will soon lead major trade missions, including missions to China and the United States. As well, he will be attending next year's World Economic Forum in Europe. I am glad that Ms Lee Rhiannon is in the Chamber, because she now knows that the Premier will attend the World Economic Forum in Europe with her. I might try and go also but Ms Lee Rhiannon and I might be on different planes. We will not be—

**The Hon. J. J. Della Bosca:** Why not?

**The Hon. M. R. EGAN:** I prefer to be with the Premier, if you don't mind. All up, between now and the end of next year the Government will be involved in more than 60 international trade missions and market visits. That is quite a lot. They include visits to the United States to market our burgeoning biotechnology businesses, to India to promote our food and wine industries, to Tokyo to promote health care exports, to Europe to sell tourism and our film industry, and there are many others. This major international investment and trade drive comes on top of the \$24.6 billion slated for investment by the private and public sector in 70 major new capital works and job creation projects over the next few years.

I must also say that many New South Wales firms overcame extraordinary challenges in preparing and providing for the Games. They embraced extraordinary opportunities. In the process, the skills, sophistication and confidence of many of those companies reached new heights. Any concerns they might have had about their ability to compete in the world market would have been dispelled. I congratulate the businesses that contributed in some way, big or small, to the greatest sporting event the world has ever seen.

**The Hon. D. J. Gay:** Is that why Harry got his pins made in China?

**The Hon. M. R. EGAN:** That was a silly interjection by the Deputy Leader of the Opposition. He should talk to his National Party colleague Mr Mark Vaile, who has a very sensible attitude on trade matters. The Deputy Leader of the Opposition would be aware of our commitments under the World Trade Organisation agreements.

**The Hon. D. J. Gay:** We have a commitment to have our pins made in China, have we? Is that what you are trying to say?

**The Hon. M. R. EGAN:** The Government and her Majesty's Opposition in this country, probably at both State and Federal levels, take a bipartisan approach to the promotion of free trade. We are not protectionists. Countries should specialise in things in which they have a comparative advantage.

**The Hon. D. J. Gay:** You have said some silly things but that is probably the silliest.

**The Hon. M. R. EGAN:** You are being a very silly man by pretending that you are a redneck. You are not a redneck. I know that, privately, you would agree entirely with Mr Vaile, so we will just let your aberration pass by without any further admonition from me. I congratulate each and every business that contributed to this great sporting event. I also encourage them to join with the Government in promoting Australian know-how and ingenuity to the rest of the world. Question time has gone an extraordinarily long time today.

#### OLYMPIC GAMES BUDGET

**The Hon. R. S. L. JONES:** My question is to the Treasurer. Can he detail to the House precisely how the \$2.165 billion was spent on the Olympic Games, or will he do so by the time of the next budget? Can he give details as to what net assets are left and how much cash will be returned from the realisation of those assets?

**The Hon. M. R. EGAN:** The details are contained in budget paper No. 2. The totals for the period from 1991-92 to 2001-02 are: Outflows—Olympic Stadium, \$133.3 million; Olympic villages, \$199.7 million; Sydney SuperDome, \$141.6 million; other venue costs, \$372.1 million; transport infrastructure, \$443.8 million; services infrastructure, \$95.7 million, Sydney athletic and aquatic centres, \$216.9 million; other infrastructure,

\$254.2 million; OCA and ORTA operating costs, \$271.3 million; common domain—Homebush Bay, \$20 million; other Olympic costs—recurrent, \$373.4 million; other Olympic costs—capital, \$83.8 million; advance/grants to SOCOG, \$59.4 million; grant to Sydney Paralympic Organising Committee, \$25.3 million. The total for outflows is \$2,690.5 million.

Inflows include Commonwealth Government, \$180.8 million; interest on investments, \$71.8 million; sale of assets, \$39 million; SOCOG capital contributions, \$312.3 million; SOCOG advance repayment, \$28.6 million; other contributions, \$37.8 million. The total for inflows is \$670.3 million. Taking \$670.3 million from \$2,690.5 million results in a gross cost to government of \$2,020.2 million. When you add to that the \$140 million that the Parliament appropriated in the last week in June, it makes a gross cost to government of \$2,160.2 million. Treasury estimates that there is additional tax revenue of some \$653 million because of the fact that we have undertaken this work and staged the Games from 1991-92 to 2001-02. Treasury therefore estimates that the net cost to the New South Wales Government is \$1,367.2 million. That means before the sale of any assets and I am not aware of any plans at this stage—

**The Hon. R. S. L. Jones:** What about the village?

**The Hon. M. R. EGAN:** I might be wrong but I understand the village has already been pre-sold. One of the things that does have to happen, but I believe it is the responsibility of the consortium that financed the village, is a refit of the premises. For example, they have to install kitchens because there are none. There are no kitchens because we wanted as much bedroom space as possible. We also wanted to encourage the athletes to eat together in the village dining room, which, as I mentioned earlier, is a huge tent with seating for 4,000 people at one time. I mentioned that I had dinner there and that I had a great time. I ate perhaps too much and no doubt contributed to the overrun in the food cost.

**The Hon. J. J. Della Bosca:** Was there any lobster?

**The Hon. M. R. EGAN:** There was no lobster, but it was good tucker.

**The Hon. Janelle Saffin:** What did you eat?

**The Hon. M. R. EGAN:** I ate an Indian curry. It was a goat curry and it was very tasty. Those figures indicate a net cost to the Government of \$1,367.2 million, plus the \$140 million, less whatever we get back.

**The Hon. R. S. L. Jones:** Yes, but what about the actual assets we have now?

**The Hon. M. R. EGAN:** The assets we have are there for our eyes to see. We have the transport infrastructure and we have all of the infrastructure at Homebush Bay. For the time being the Stadium and the SuperDome are in private ownership but it is an arrangement whereby after a period of time they revert to government ownership. I do not recall the precise details. The Aquatic Centre, of course, is totally owned, as is the hockey stadium and all of the showground.

**The Hon. J. F. Ryan:** What about the shooting range?

**The Hon. M. R. EGAN:** I watched the shooting on television. When I was in Dubai I was entertained at the Dubai Shooting Club. They took me down to the pistol range, together with other members of my group, and they told me how to shoot and gave me 10 shots. Guess what? On each one of those 10 shots I got a nine! And I have never shot a gun before.

**The Hon. J. S. Tingle:** You were supposed to get a 10.

**The Hon. M. R. EGAN:** What, a real bullseye—the tiny little white bullseye?

**The Hon. J. S. Tingle:** Yes.

**The Hon. M. R. EGAN:** I watched the Olympic shooting on television and I did not see too many of those shooters get 10.

**The Hon. J. S. Tingle:** I said you are "supposed" to get 10.

**The Hon. M. R. EGAN:** I did not see any of them get 10 nine's in a row. I had never fired a gun before in my life.

**The Hon. A. B. Kelly:** We will have to run you in the Olympics.

**The Hon. M. R. EGAN:** That actually passed through my mind. During the Olympics I was thinking what possible event could a 52-year-old start training for and, at the age of 56, win a medal at the Athens Games. I think I might be a good shooter. It surprised me because as you can see my arm shakes, my hand shakes. I do not have a steady hand, but it did not seem to matter.

**The Hon. J. S. Tingle:** You can get special glasses.

**The Hon. M. R. EGAN:** Special glasses! I wore earmuffs but I did not have any glasses. I just closed one eye and looked through the other. I was very surprised but there is hope for all of us, even the Hon. J. F. Ryan who is looking quite optimistic over there.

**The Hon. R. S. L. JONES:** I ask a supplementary question. If you look at the actual figures you will find that we surely made a profit of about \$500 million on the Games, if you add in all the infrastructure we are left with?

**The Hon. M. R. EGAN:** That is absolutely right—and if you add in the extra tax revenue that the Commonwealth Government will get from the Games. The Commonwealth is the main tax beneficiary because under the Commonwealth-State tax arrangement the Commonwealth gets company tax and income tax. It is possible that the cost to the New South Wales taxpayer would be negated if the Commonwealth Government's extra revenue were included.

**The Hon. D. J. Gay:** Egan economics.

**The Hon. M. R. EGAN:** No, it is a matter of commonsense. If you discount the value of the remaining venues there is no question that we have those venues for a lower cost than we would otherwise get them for. We have assets that have been paid for. Also, if you want to put a value on the international promotion that we will benefit from during the next 50 years, we are so far in front it does not matter. What you cannot put a value on because it is absolutely impossible is the goodwill that the Games generated, not only the feeling of goodwill in Australia, but also the international goodwill that an Olympic Games, when it is run properly, fosters around the world. One of the things I liked about the Games was the superb planning and the venues, but probably the most important factor was the attitude of the Australian people.

The final thing I will say is this. I cannot remember an Olympic Games where there were so few displays of poor sportsmanship and so many displays of good sportsmanship. The athletes contributed to the success of these Games more than to any other Games. The walker, Jane Saville, for example, and Marion Jones the champion of the 100 and 200 metre sprints were better than some who have won before, such as Mary-Jose Pereg. It took one back to the Melbourne Olympics when marvellous Marlene Matthews and Dawn Fraser and Jon Henricks won medals. They were good people and I got the impression during these Olympics that, in the main, those who won the medals were good people. It made one proud to be not only an Australian but a member of the human race. That is enough from me.

If honourable members have further questions, I suggest they ask them tomorrow.

#### **GENERAL RECREATIONAL FISHING FEE**

**The Hon. E. M. OBEID:** On 11 October the Hon. Jennifer Gardiner asked me why the expressions of interest for the general recreational fishing fee implementation committee closed on 30 October. I have obtained further information and I provide the following response:

This Government is committed to consultation at every stage of every process. It is intended that the General Recreational Fishing Fee Implementation Committee will assist with the finalisation of the bill. If Parliament decides to support the bill the committee will also assist with associated regulations, an implementation strategy and administration. I may also ask their advice on any matter relevant to the implementation including advice on possible expenditure priorities. Involving stakeholders at all stages of the process will help ensure that a detailed and comprehensive package can be established from the very beginning.

#### **INDIGENOUS FISHING STRATEGY**

**The Hon. E. M. OBEID:** Earlier today the Hon. Jennifer Gardiner asked me a question about the indigenous fisheries strategy. I have obtained further information and I provide the following response:

The Government is currently developing an indigenous fisheries strategy to address the specific fishing needs of Aboriginal people in New South Wales. Indigenous people have undertaken communal fishing activity for tens of thousands of years, and

unfortunately rigid rules designed for modern recreational fishing can be inappropriate for genuine traditional fishing. We also want to encourage indigenous communities to pursue aquaculture. They are often well placed to enter this growing industry. The development of this strategy includes conducting workshops with stakeholders. Two rounds of workshops were held in Sydney, Narooma, Kempsey, Yamba, Menindee and Brewarrina.

The first round of workshops provided two days in each location for Aboriginal people to inform the New South Wales Government of fisheries issues that may effect them. In the second round of workshops the Government provided Aboriginal stakeholders feedback and an opportunity to prioritise issues that had been raised. Requests for meetings in La Perouse, Tweed Heads, Coffs Harbour, Nambucca Heads, Grafton, Moree and Inverell were also met by the Government. A meeting with Aboriginal commercial fishers was also recently held at Batemans Bay. The sustainability of the resource and the rights and interests of all stakeholder groups are being considered in this process.

The New South Wales Government also sponsored a number of people from the Aboriginal community to attend the National Indigenous Sea Rights Conference and the Fish Rights '99 Conference. Representatives of my department, New South Wales Fisheries, also attended these conferences. The conferences provided an opportunity for people to share information on indigenous rights and interests in the seas and rivers, and to talk about different government initiatives and native title in New South Wales. They also provided a platform for indigenous people to discuss strategies for achieving desired outcomes for aquatic conservation and self-determination. Many of the issues raised at the conferences are currently under consideration through the Government's indigenous fisheries strategy.

My department will be distributing a working document to indigenous representatives and the thirteen ministerial advisory councils and management advisory committees later this year. This document will also discuss the general recreational fishing fee and its impact on indigenous fishing activities. I am advised that the freshwater licence was first introduced with an indigenous exemption in 1957. The Government's proposal will not affect the existing exemption. However, Aboriginal persons are required to pay a fee to fish in saltwater, unless that person is party to a registered native title claim or that person is taking part in a traditional cultural activity, as identified under the indigenous fisheries strategy. I am pleased to meet and discuss any issues concerning the Aboriginal community, and I look forward to ongoing discussions with Aboriginal community representatives in the future.

**Questions without notice concluded.**

## **REGULATION REVIEW COMMITTEE**

### **Report**

**The Hon. Janelle Saffin**, on behalf of the Chairman, tabled Report No. 12/52 entitled "Report on the Regulatory Controls Relating to Dingoes", dated October 2000.

**Ordered to be printed.**

## **INDUSTRIAL RELATIONS AMENDMENT (COUNCIL SWIMMING CENTRES) BILL**

**Bill introduced and read a first time.**

### **Second Reading**

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.32 p.m.]: I move:

That this bill be now read a second time.

This bill is the outcome of constructive negotiation and compromise between employee and employer representatives. The object of this bill is to revise the provisions of schedule 1 to the Industrial Relations Act 1996 that deem the managers or supervisors of public baths, under the care and control of a local council, to be employees of the local council even though they are not engaged by the local council under a contract of employment. This provision has been included in industrial relations legislation in this State since 1964. However, in 1995 following the release of the draft exposure bill for the 1996 industrial relations legislation, the Local Government and Shires Association of New South Wales raised concerns over the continued designation of council swimming pool operators as deemed employees.

In addition, a number of councils identified the use of contractors as consistent with National Competition Policy and a longstanding practice within councils. General concerns were also raised by the Confederation of Employer Organisations Group over the inclusion of contractors in the definition of "employee". In response to these concerns the Government decided to carry over the existing council swimming pool operators and supervisors deemed provision and conduct a review once the legislation commenced. This

review was conducted by the Department of Industrial Relations in consultation with the Local Government and Shires Association and the Federated Municipal and Shire Council Employees Union, New South Wales branch. The result is the bill before us today.

The bill provides that contractors and others engaged by a local council are not deemed to be employees if they are bona fide contractors who employ labour to perform the work or if they are partners in a partnership engaged to perform the work; describes the facilities concerned as swimming centres rather than public baths, that is, public facilities used predominantly for the purpose of swimming; ensures that the deeming provision continues to apply only to persons managing or supervising swimming activities at the centre, and not to persons who are engaged only in connection with other activities at the centre; and makes it clear that the deeming provision applies to swimming centres under the care and control of local councils even if they are managed by a committee representing the local council or councils concerned.

The final outcome offers flexibility in arrangements councils may make for the running of swimming centres. It is also a fair outcome in the protection provided for managers and supervisors of swimming centres who are for all intents and purposes employees of the council. In presenting this bill, I thank the representatives of the Federated Municipal and Shire Council Employees Union and the Local Government and Shires Association for negotiating in a constructive manner to achieve an acceptable and agreed position. This bill reflects the Government's priority to achieve flexible and fair outcomes for workplaces that best meet the needs of both employers and employees. I repeat that this bill is an example of what can be achieved when parties genuinely aim to reach a compromise. I commend the bill to the House.

**Debate adjourned on motion by the Hon. J. H. Jobling.**

#### ADJOURNMENT

**The Hon. J. J. DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.37 p.m.]: I move:

That this House do now adjourn.

#### TENTERFIELD HIGH SCHOOL

**The Hon. JENNIFER GARDINER** [5.37 p.m.]: I draw to the attention of the House some major problems at the Tenterfield High School, on the Northern Tablelands, particularly the shortage in teacher numbers and class sizes. Problems have arisen due to a shortage of trained teachers, both permanent and casual, at the school. The consequences have been, for example, that the head teachers have been forced to increase their loads and take on extra responsibilities, such as playground duty. The deputy principal has been forced to cover extra classes and, in the second term an average of five classes a week have been covered by other staff at the school or not covered at all. At one point the science classes had eight different teachers, which is unsettling for the students and of concern to the parents of students. In term two 33 senior classes were not covered by teachers; even casual teachers were not available.

Tenterfield High School has experienced difficulties in filling permanent vacancies in the science department and has been forced to look interstate for an agricultural science teacher. Of course, agricultural science is an important component in a community such as Tenterfield. That is a major concern. Also, in the areas of physics and learning difficulties there have been vacancies. As far as I am concerned this situation is unsatisfactory and reflects poorly upon the Carr Government and the Minister for Education and Training, Mr Aquilina. Students in country schools such as Tenterfield High School have the right to expect that their schools be adequately resourced with the appropriate number of teachers and a stable teaching work force. The students have a right to the highest level of education. It is not good enough that classes are not covered, especially the senior classes with students approaching the Higher School Certificate. I take this opportunity to wish the students at Tenterfield High School, and at all other schools, all the best for the Higher School Certificate.

The school also reports its concern about the decline in the number of year 12 students in Tenterfield who are considering taking up a career in secondary school teaching. In May this year a publication of the New South Wales department of public education, *Inform*, stated that there would be an adequate supply of teachers, both primary and secondary, for the next seven years. Yet, Tenterfield High School has been forced to look interstate for teachers, to make do with an inadequate supply of casual teachers and to wait many months for permanent positions to be filled. The Minister and his department must ensure that country schools are

adequately resourced with the appropriate number of teachers and that country schools, especially in the more isolated areas, have an adequate supply of casual teachers. Also there is a duty to ensure that more students, especially those from country areas, take up the honourable profession of teaching. The Government should ensure that country schools are able to fill vacancies quickly and that strategies are developed to make teaching at country schools more attractive to prospective and experienced teachers.

### TOBACCO INDUSTRY

**The Hon. Dr A. CHESTERFIELD-EVANS** [5.42 p.m.]: Today I was the only member of this House who did not get a kit from British American Tobacco. The kit has the message, "Illegal tobacco like this costs the community hundreds of millions of dollars a year." The box contains cigarette tubes and filters, some chop chop tobacco—which is raw tobacco—and a brochure about the vileness of this illegal tobacco. Legal tobacco kills people at a far greater profit. The line taken by British American Tobacco—which is represented by Nick Greiner, the sponsor of a great number of deaths—is that half a kilogram of chop chop or uncut tobacco costs about \$40 plus the tubes and filters, whereas roll-your-own tobacco costs between \$150 and \$180. British American Tobacco claims that chop chop has about 7 per cent of the so-called legitimate—I like that word—tobacco market and a 75 per cent distribution throughout tobacconists. It further claims that the excise loss is \$600 million and the retailers loss is \$70 million. British American Tobacco does not mention that would mean a loss to the tobacco manufacturers of about \$180 million. The black market is growing exponentially.

The credibility of the tobacco industry is extremely low. It has been involved, particularly in North America, with appalling incidences of smuggling tobacco, on which no excise is paid. There is good evidence that the tobacco industry funnels cigarettes on which excise is paid around the world in containers. Interestingly, the tobacco industry is now concerned about chop chop tobacco. The industry says that the tobacco can easily be traced. That is true, and so can its tobacco, which is smuggled around the world in containers so that duty is not paid on it and the industry gets super-normal profits. No doubt the British American Tobacco solution encompasses lower taxes because it uses smuggling across the Canadian border with the United States of America to achieve lower taxes in Canada, totally undermining the tax structure in Canada.

The solution for New South Wales is to have a meaningful licensing system—not a negative licensing system, as was suggested by the Minister and then withdrawn—where tobacconists pay a realistic fee for tobacco. That money can be used for enforcement of sales to minors and against illegal sales. This system of licensing would restrict the number of tobacco outlets and stop the sale of cigarettes to minors and illegal sales of chop chop, because there would be a well-funded enforcement system. I, as part of the health lobby, think that the price of tobacco should be kept relatively high in order to discourage smoking as a habit. We should recognise that with chop chop tobacco is being seen for what it really is: a grubby little drug which causes social harm. It is distributed illegally and is very similar to other drugs of abuse, such as marijuana and various forms of processed pills. Tobacco should be judged in the same way as other drugs.

Alex Wodak has suggested that all drugs be treated the same and that the concentration should be placed on a harm minimisation strategy. In other words, do not look at the type of drug, simply ask how to minimise the harm that the drug does to society. It has been said that tobacco is an established drug and we must simply curtail its marketing, tax it and regulate its distribution. This is being undermined by tobacco becoming another grubby illegal drug rather than a grubby legal drug. As a solution I will be asking the Minister for Health to look at a licensing system for tobacconists with a reasonable fee which will create funds for the enforcement of sales to minors and the prevention of illegal sales. Hopefully this will be another way to lessen the harm of tobacco, such as the 17,000 deaths caused by tobacco. We must be careful not to follow the tobacco industry's precepts because it seeks profit maximisation, no matter how many people die.

### RETIREMENT OF THE HONOURABLE ANDREW BRUCE MANSON

**The Hon. A. B. MANSON** [5.47 p.m.]: I inform the House that I have applied to the Australian Labor Party New South Wales Administrative Committee to resign from the Legislative Council. For me, resigning is a new experience. I am an ex-building worker. Most people would realise that building workers do not normally resign from the job. When the job finishes or runs down they get the sack or get laid off. After 50 years working life I am looking forward to retirement. I have had a very fortunate life and I have had many great opportunities. My greatest fortune has been my partnership with my wife, Jacky, for over 43 years. With Jacky's support, and that of my three children and their partners, as well as my six grandchildren, I am looking forward to a happy and long retirement.

**The Hon. D. J. Gay**: You deserve it.

**The Hon. A. B. MANSON:** Thank you very much. For me 1957 was a big year. Not only did I get married at the age of 21, I completed my apprenticeship as a carpenter and I joined the Building Worker's Industrial Union [BWIU], as it was known in those days. The BWIU played a big part in my working life. If I had not been involved with the union, there is no doubt that I would not have ended up as a member of the Legislative Council. I was very fortunate to work with some great trade union leaders, including Pat Clancy, Tom McDonald and Stan Sharkey, who were very dedicated working-class leaders and proud members of the then Communist Party. The most important thing I learned from them was that they always put the union membership first. They carried out this principle to their own political and personal disadvantage from time to time.

Like other members of the upper House who put constituents first, that is the way to go for the future of this House and for all democratic parliaments. Of course, as I was a member of the Australian Labor Party [ALP], we had a few disagreements. The competition for recruitment of union activists into the ALP or the Communist Party never affected our friendship, nor my personal respect for their leadership qualities and their different political points of view. However, as an ALP member and activist since 1963, I never gave any serious consideration to becoming a member of Parliament. As Johnno Johnson would know, leftie building workers were not very popular in New South Wales ALP politics in the 1960s and 1970s and even up to the 1980s.

However, in 1981 I was encouraged to stand for a new State seat, the seat of Seven Hills, after a redistribution. My mate Ken Roberts, a wharfie, who was the Left candidate, was the selected candidate. When the boundaries were decided, Ken Roberts finished outside the State seat and I was recruited to stand in his place. To my great surprise, and to most other people I think, I came within three votes of winning that preselection. As Bob Christie, the candidate who won that seat of Seven Hills and held the seat until his retirement from the Legislative Assembly, reminded me last night, it was the best favour he ever did for me. In 1987 I was approached to stand on the upper House ticket and I was elected in 1988 from the sixth position on the ticket. Firstly, as a reluctant candidate and, finally, as a member of the Legislative Council, it has been a great privilege for me to serve in this House.

**The Hon. J. R. Johnson:** It has been our privilege to have you.

**The Hon. A. B. MANSON:** Not only has it been a great privilege, but it has been a great experience. I migrated to Australia from Scotland in 1949 at the age of 13. I had 12 months schooling here before leaving school at 14. I have worked full time for the past 50 years, mainly in the building industry, with a few stints of unemployment, which is normal for that industry. But I have no complaints. I have been very fortunate. I must comment on the Parliament House staff. In all the jobs I have had and in all the places I have worked I have never been so impressed as I have been with the people I have had the pleasure of working with in this establishment. If there were an Olympic medal for Parliament House staff, they would all get gold ones. I do not intend to mention them individually because I might forget someone, and if I did that someone might not get a gold medal.

I would ask the Clerk of the Parliaments, John Evans, to convey my appreciation to all the staff for their advice and assistance over the years. I am sure that Marcus Bleechmore, my researcher, will continue to be a valued friend as well as a loyal worker. I know that he will look after my replacement as well as he has looked after me over the years. I thank you, my parliamentary colleagues, for your support and friendship—not only the members of my side of politics but every member of this House. It has been my privilege to work with you and to learn from you. I will keep in touch and I will let you know if the only thing better than being a member of the upper House is being a retired member of the upper House, as so many of my retired colleagues have recently told me. Thank you for your support and your friendship.

#### **CROOKWELL BOWLING CLUB CHEQUE CASHING FACILITIES**

#### **WESTPOINT BATHURST NEWSAGENCY LOTTERIES FACILITY**

**The Hon. D. J. GAY** (Deputy Leader of the Opposition) [5.52 p.m.]: It is a great honour to follow the Hon. A. B. Manson in the adjournment debate. Andy and I came into this Parliament on the same day. I am proud to say that he leaves this place as a friend, and I wish him and Jacky well in their retirement, which has been well deserved. I am sure every member of this House wishes him well. He is truly a decent person who has ably and honestly represented the group of people whom he was elected to represent. We will miss him.

I wish to detail the case of two bodies that have been unfairly treated by the Department of Gaming and Racing. In each case bureaucratic delays and inaction by the Minister for Gaming and Racing, Richard Face,

have led to frustration in the community. In the first case, the viability of a small bowling club in my hometown of Crookwell has been threatened. I have been advised that officers from the Liquor Administration Board told the Secretary-Manager of the Crookwell Bowling Club that its application for an exemption from clause 3O (P) of the Registered Clubs Amendment (Responsible Gaming) Regulation will not be processed because the application was received before the Minister approved the amendments to the guideline.

Clause 3O (P) of the regulation prohibits a registered club from cashing cheques if a bank or other facility is situated within five kilometres of it. It also limits the cashing of a cheque to \$400. In a city or major regional centre that may not be a problem, but in country towns where rationalisation of services has resulted in the withdrawal of many banks, the local club or pub is often the first port of call for farm workers, shearers, et cetera, who are paid by cheque. They need to be able to cash those cheques to get access to their money on a weekly basis, and perhaps over a weekend. The Minister delayed approving the guidelines until 4 October, which left clubs across the State with only 10 days to apply for an exemption before the changes took effect.

The Crookwell Bowling Club has been penalised for making a prompt application for an exemption that would allow workers in the district to cash a cheque on a Friday afternoon after banks close. If a shearer misses the bank in Crookwell on Friday afternoon, he will not be able to drive to Goulburn, Yass or anywhere else to get his cheque cashed by a bank—which could mean the difference between having or not having money for the weekend. It is not that the area does not have a bank: Crookwell does have a banking facility, although its hours of service, compared with what used to be available, have been somewhat reduced. Areas that are exempt from the legislation are those without banking facilities within a five-kilometre radius.

If workers do not make it to the bank in time to cash their cheques, they need an alternative place at which to cash them, and that alternative place in this case is the club. This is an example of bureaucracy gone mad. I call on the Minister to direct his Liquor Administration Board to process urgently all applications for exemptions to clause 3O (P) of the regulation. I am sure that many other clubs, apart from the Crookwell Bowling Club, are waiting for approval from the board. This situation needs to be rectified as soon as possible. Inaction is harming the rural work force and putting the viability of many small country clubs at risk.

The second matter I wish to refer to relates to an application by a Bathurst newsagent for an on-line agency to provide New South Wales Lotteries products. The Westpoint Newsagency in Bathurst, which is owned and operated by Mr Lachlan Sullivan, has made repeated applications in the past 12 months to the Minister and New South Wales Lotteries in an effort to get Lotteries products into his store. The Westpoint Newsagency services the Windradyne and West Bathurst areas. Anyone who knows Bathurst would know that it is a high-growth area with a large pensioner and retiree population. The newsagency is located about four kilometres from the Bathurst central business district, and at the moment people living in the area have to travel that distance if they wish to purchase Lotteries products, and this often creates difficulties.

There are six Lotteries agencies in the Bathurst CBD and the Government seems to think that the people of West Bathurst will travel happily into town to do their business. The Westpoint Newsagency quite rightly argues that they have a case for an on-line agency. The Government appears to have made this decision based on projected commercial rates of return rather than on the needs of the community as a whole. Westpoint's owner, Lachlan Sullivan, has written to me on several occasions detailing his frustration with the delays he has experienced in this matter. He informs me that he sent a letter by registered mail to the Minister in July, but he is yet to receive a response or even an acknowledgement of his correspondence. [*Time expired.*]

### CYPRUS INDEPENDENCE FORTIETH ANNIVERSARY

**The Hon. J. HATZISTERGOS** [5.57 p.m.]: On 16 June 1960 the Republic of Cyprus emerged as an Independent State for the first time in the island's long history. The year 2000 marks the fortieth anniversary of that event. This year is a special time to recognise the achievements of the people of Cyprus since independence, to celebrate the vigour and vitality of Cypriot culture in Australia, and to acknowledge those who are presently enduring the great hardships of a tragically divided homeland. Cypriot culture is among the oldest in the world, extending back 9,000 years. By 3700 BC the island was well inhabited, and an important junction between east and west. Strategically located in the Eastern Mediterranean, Cyprus has been coveted by the powerful throughout civilised human history.

Although ethnically Greek since the second millennium BC, Cyprus has been influenced in turn by Assyrian, Persian, Macedonian, Egyptian, Roman, Byzantine, Frankish, Ottoman and British peoples. Right up to the present day the island of Cyprus continues to be one of the great historical and cultural crossroads. Cyprus

finally gained its independence from Britain in 1960. Prior to 1960 the legacy of British colonial rule was a woefully underdeveloped economy. Since then, however, Cyprus has turned itself into a modern and dynamic economy characterised by strong industrial, agricultural and service sectors, and an advanced physical and social infrastructure. The successful economic performance of Cyprus is reflected in its stability, rapid growth and full employment conditions throughout almost the entire period since its independence.

Internationally the country promotes its educated English-speaking population and reaps the benefits of good transport connections and a strong telecommunications industry. The island is also a well known holiday resort, and a vital centre for banking and shipping services. The striking achievements of Cyprus have been won in remarkably difficult circumstances. The invasion of 1974 disrupted 13 years of rapid and sustained socioeconomic development. The continued occupation of one-third of the island in the north has created a severe economic and social dislocation. One-third of the Cypriot population was displaced, and private and national assets were seized by the invaders. The area now under occupation had hitherto been the most productive and developed part of the island.

Working against immensely unfavourable odds, the people of Cyprus have embarked on a well coordinated, collective action since the Turkish invasion. Full employment conditions were re-established as early as 1978. Despite the disruption and inefficiencies of the island's partition, Cypriot prosperity now exceeds preinvasion levels. Triumphant over division, dismemberment and destitution, the Republic of Cyprus should be proud of its achievements in attaining a high standard of living and an enviable lifestyle for its citizens. Today the Cypriots are among the most prosperous people in the Mediterranean region. By world standards the per capita income of Cyprus is high. Cyprus has embarked also on a new five-year development plan to cover the period 1999 to 2003. The strategy will ensure the country is well placed to meet the challenges of economic globalisation, trade liberalisation, technological change and the imminent accession of Cyprus to the European Union.

In the year 2000, 40 years after independence, the economic future of Cyprus looks bright. With the increase in globalisation of the international economic order, Cyprus's geographical positioning as a bridge between Asia, Europe and Africa will ensure its continued significance. The fortieth anniversary of Cypriot independence is significant for Australia because of our long association with the island. The depth and warmth of the relationship between Australia and Cyprus is based largely upon the strong human ties between our two countries and the common institutional inheritances such as Parliament, legal and business systems, and membership of the Commonwealth. Cyprus has featured far more significantly in Australian foreign policy than its size or distance from us would otherwise suggest. In particular, Australia's interest in this comparatively small and distant country is sustained by the role Australia has chosen to play in peacekeeping efforts over the years. Since 1964 about 1,090 Federal and State police officers have served in the Australian contingent of the United Nations [UN] force stationed on the island.

Furthermore, Australia is the only country to have maintained a continuous police presence on Cyprus since UN peacekeeping began. Our affection for Cyprus is further strengthened by the colour and vitality of those members of the Cypriot diaspora living in this country. This is a small island in the Mediterranean, which is the ancestral home of over 50,000 Cypriot Australians who make up the second largest Cypriot community outside Cyprus. Cypriot Australians are a remarkable and valuable segment of our multicultural community. Through them we pay tribute to the 40 years of proud independence of the Republic of Cyprus. This young nation has achieved much in that time, yet an end to the conflict remains an elusive goal. More than 26 years after the 1974 Turkish invasion of northern Cyprus the island remains artificially and tragically divided. In celebrating the anniversary of their nationhood, we wish the Cypriot people a speedy fulfilment of their surpassing desire for peace.

#### **WARRINGAH COUNCIL ELECTIONS**

**Ms LEE RHIANNON** [6.02 p.m.]: I recently attended the Warringah Council mayoral elections that saw the incumbent, Councillor Peter Moxham, re-elected as mayor. The elections also saw the popular deputy mayor, Councillor Phil Colman, ousted from that position and as chairman of the key strategy committee by Councillor Darren Jones. Over the past 40 years the activities of Councillor Jones and his family have been infamous. Councillor Jones' father, Gordon, was Shire President when Warringah Council was dismissed in 1967, and two of his associates were gaoled. In 1985 Warringah Council was dismissed again following Councillor Jones' term as Shire President. As it was Councillor Jones' majority faction that supported the re-election of the mayor this year, it is clear that he has positioned himself to again take over as mayor in the future.

Although Councillor Jones is the chairman of the strategy committee he will be prohibited from participating or voting on either of council's major strategy documents—the local environment plan and the residential development strategy—due to his pecuniary interest as a developer and major landowner in Warringah. What an extraordinary situation that the chair of the committee cannot even participate and vote on the main aspect of that committee's work! Councillor Jones and his family own, among other properties, a factory at 366 Pittwater Road North Manly. On 15 December 1998 councillor Jones moved a motion as follows:

Counsel implement the necessary procedures to validate a medium density zoning for the Hayman & Ellis site.

This site is directly adjacent to Councillor Jones' property at 366 Pittwater Rd, which, at that time, was zoned industrial 4 (b), and medium density housing was prohibited. However, Councillor Jones' motion, which was passed, was the catalyst for his property to be rezoned to allow medium density housing. Obviously, the potential financial gain to Councillor Jones from this process is enormous. The Department of Local Government has failed to refer this matter for full investigation and to the Pecuniary Interest Tribunal for hearing, citing a lack of resources to follow it through. So, Councillor Jones' misuse of power and apparent breach of the Local Government Act has passed without scrutiny.

**The Hon. D. J. Gay:** Point of order: The actions of a councillor, who I gather from this speech appears not to have voted on the motion affecting his property, should not be the subject of debate on any adjournment motion of this House.

**Ms LEE RHIANNON:** To the point of order: My understanding is that members may explore a range of issues during the adjournment debate. Obviously I am outlining a situation that the Greens believe is worrying. I am part way through my speech, which does not contravene the standing orders of this House, and I believe I should be allowed to finish it.

**The DEPUTY-PRESIDENT (The Hon. A. B. Kelly):** Order! The relevant standing orders relate only to references to the Sovereign, the judiciary and members of either House of the Parliament. Accordingly, Ms Lee Rhiannon is in order and may proceed. No point of order is involved.

**Ms LEE RHIANNON:** Perhaps this knowledge of the Department of Local Government's lack of resources was a factor when Councillor Jones again stood to benefit from a council decision on 1 August this year. Councillor Jones' property at 366 Pittwater Road is directly across from Manly Lagoon. At this location the water table would have restricted any medium density development, particularly as underground parking would be required to maximise the block's development potential. Councillor Jones is a voting member of the Joint Manly Lagoon History Flood Plain Management Committee and moved to spend around \$1.4 million in flood mitigation works. It is clear that Councillor Jones stands to benefit from these works in his capacity to develop his property at 366 Pittwater Road. Therefore, it is completely inappropriate that he sit on that committee. Warringah Council is locked in conflict with its own community. It is a council run by developers for developers. The events I have mentioned seriously undermine the confidence of the community in local government. The Minister for Local Government must insist that Councillor Jones' activities are thoroughly investigated and referred to the Pecuniary Interest Tribunal where appropriate.

**Motion agreed to.**

**House adjourned at 6.07 p.m.**

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